

CONSTITUTIONAL COMMENTARIES

The Jurisprudence and Legacy of
Mahmudul Islam



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Constitutional Commentaries: The Jurisprudence And Legacy of Mahmudul Islam

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Constitutional Commentaries: The Jurisprudence and Legacy of Mahmudul Islam

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S M Nazmuz Sakib, based on the conceptual framework described in the Preface.

Errors and Omissions

Every effort has been made to ensure the accuracy of the information contained in this book. If any errors or omissions are found, please notify the author so that corrections may be made in future editions.

Preface

This book exists because a question would not leave me alone. The question was simple in its phrasing but bottomless in its implications. What does it mean to take a constitution seriously? Not as a ceremonial document to be invoked on national holidays, not as a political weapon to be wielded against opponents, not as a bureaucratic manual to be consulted by lawyers when a dispute arises, but as a binding, living, and demanding commitment that a political community makes to itself about the nature of power, the limits of authority, and the dignity of every person within its borders?

I first encountered the work of Mahmudul Islam as a young law student in Dhaka, struggling to understand why Bangladesh's constitution, a document born from blood and aspiration in 1972, seemed so often to be honored in its breach rather than in its observance. The fundamental rights were eloquent. The directive principles were inspiring. The structure of parliamentary government was carefully designed. And yet the reality of constitutional practice in Bangladesh was a chronicle of martial law proclamations, manipulated amendments, suspended rights, and a judiciary that was alternately courageous and compromised. The gap between the constitutional text and the constitutional experience of ordinary citizens was not a gap at all. It was a chasm.

It was Mahmudul Islam's "Constitutional Law of Bangladesh" that first gave me the tools to understand this chasm. His book was not merely a doctrinal treatise. It was a work of constitutional philosophy disguised as a practitioner's manual. He wrote with the precision of a scholar who had mastered every provision of the constitution and with the urgency of a lawyer who had argued cases before a court that was often the only shield between citizens and an overreaching state. He did not pretend that the constitution was always obeyed. He did not offer easy formulas for closing the gap between aspiration and reality. Instead, he taught a method, a way of reading the constitution that was simultaneously textual, historical, comparative, and purposive. He showed me that constitutional law is not a collection of right answers but a conversation, sometimes heated, sometimes philosophical, sometimes profoundly political, about the nature of power and the meaning of the promises that a political community makes to itself.

This book is the product of that conversation, extended over many years and deepened by the extraordinary events that have transformed Bangladesh's constitutional landscape since Mahmudul Islam passed away in February 2016. He did not live to see the July Uprising of 2024, the fall of a government that had ruled for fifteen years, the establishment of an interim administration under Professor Muhammad Yunus, the work of eleven reform commissions, the signing of the July National Charter in 2025, or the constitutional referendum of February 2026. He did not witness the return of the Bangladesh Nationalist Party to power with a two thirds parliamentary supermajority or the beginning of the most ambitious constitutional reform process in the nation's history. But his constitutional thought is more relevant to these events than ever, because the questions that the uprising and the reform process have placed at the center of Bangladesh's national life are exactly the questions that Islam spent his career investigating.

What prevents a parliamentary majority from becoming a constitutional dictatorship? How can fundamental rights be enforced against a government that has the political power to ignore them?

What institutional arrangements are necessary to make judicial independence genuine rather than merely formal? How should constitutional provisions be interpreted when their text is ambiguous and their purpose contested? And what is the relationship between constitutional law and political culture, between the formal constitutional order and the informal norms and behaviors that give constitutional provisions their actual meaning? These are not abstract academic puzzles. They are the lived constitutional questions of a nation that has repeatedly seen its constitutional promises betrayed and that is now attempting, perhaps for the first time, to build a constitutional order that can withstand the pressures of political ambition and partisan interest.

This book is not a biography. It is not a hagiography. It does not exist to build a monument to a man who is already memorialized within the law libraries, courtrooms, and legal imaginations of an entire nation. Rather, this work exists to do something far more challenging and far more necessary. It exists to think through the constitutional philosophy of Mahmudul Islam with the same seriousness, the same critical rigor, and the same intellectual courage that he himself brought to the study of Bangladesh's supreme law. It seeks to do for Islam's constitutional thought what Islam himself did for Bangladesh's constitution: to open it up, to historicize it, to subject it to comparative and philosophical scrutiny, and to ask what it means for the constitutional life of a nation that continues to change, to struggle, and to aspire.

The book is organized into eight parts. Part One covers the essential biographical and intellectual foundations: who Mahmudul Islam was, where he came from, what intellectual traditions shaped him, what philosophical commitments animated his constitutional thinking, and how his life intersected with the great constitutional moments of Bangladesh's history. Part Two descends into the domain of fundamental rights, examining how the constitutional promises of freedom, equality, and dignity are given legal form and judicial enforcement. Part Three turns to the architecture of state power, analyzing the separation of powers, the parliamentary system, the concentration of executive authority, and the structural conditions for constitutional accountability. Part Four explores the constitutional economy, addressing property, labour, markets, and the jurisprudence of economic justice. Part Five provides a systematic and analytically deep examination of the fundamental rights guaranteed in Part III of the constitution, organized around the major categories of rights and the most significant jurisprudential, philosophical, and political questions they raise. Part Six examines the relationship between Bangladesh's constitutional order and the broader international legal system, including treaty law, human rights incorporation, and the horizons of global constitutionalism. Part Seven analyzes the constitutional framework for economic governance, from land rights and agricultural property through labour rights and environmental protection to the constitutional dimensions of the digital economy. And Part Eight arrives at the constitutional moment of 2024 through 2026, examining the July Uprising, the reform commissions, the July Charter, the referendum, and the prospects for sustainable constitutional democracy in Bangladesh.

Throughout these eight parts, I have sought to write in the spirit of Mahmudul Islam's own constitutional scholarship. That means combining doctrinal precision with philosophical depth, historical consciousness with comparative breadth, and analytical rigor with practical wisdom. It means taking constitutional text seriously while recognizing that text alone cannot sustain a constitutional order. It means acknowledging the gap between constitutional aspiration and constitutional reality while insisting that this gap is not a permanent feature of political life but a

constitutional failure that can and must be addressed. And it means writing with intellectual honesty, following the analysis where it leads even when the conclusions are uncomfortable for the powerful.

This book is also, unavoidably, a product of its own historical moment. The constitutional reform process that began with the July Uprising of 2024 and that is still unfolding as these words are written is the most significant constitutional transformation in Bangladesh since the adoption of the 1972 Constitution. The outcome of this process is not yet determined. The newly elected BNP government, commanding a two thirds parliamentary supermajority, has both the formal authority and the popular mandate to implement the reforms approved in the February 2026 referendum. Whether it will do so faithfully, whether it will resist the temptations of constitutional manipulation that have ensnared every previous government in Bangladesh's history, and whether the new constitutional institutions will develop the independence and the capacity to enforce constitutional constraints against the powerful, are questions that only time and the constitutional behavior of political actors can answer.

What this book can do is to provide the analytical framework within which those questions can be intelligently addressed. It can articulate the constitutional principles that the reform process is supposed to serve. It can identify the institutional arrangements that have proven effective in other constitutional systems in protecting constitutional democracy against the pressures of partisan ambition. And it can honor the intellectual legacy of Mahmudul Islam by subjecting the reform proposals to the same kind of critical, rigorous, and philosophically informed constitutional analysis that he brought to every constitutional question he addressed.

I owe deep debts that can never be fully repaid. To the teachers who first introduced me to Mahmudul Islam's work, I owe the initial spark of intellectual curiosity that eventually grew into this book. To the colleagues and students who engaged with me in countless conversations about Bangladesh's constitutional law, I owe the refinement of my arguments and the correction of my errors. To the judges, lawyers, and legal scholars of Bangladesh who have kept the constitutional tradition alive through decades of political pressure and institutional fragility, I owe an admiration that words cannot adequately express. And to the family of Mahmudul Islam, who have entrusted his intellectual legacy to the community of constitutional scholars and practitioners, I owe a profound gratitude for their generosity and their patience.

This book is dedicated to the proposition that understanding the law of a constitution is not merely an academic exercise but a civic necessity. In a nation where constitutional promises have so often been betrayed, the work of constitutional understanding is not a luxury for scholars but a discipline for citizens. Mahmudul Islam understood this. He lived this. And if this book can transmit even a portion of his constitutional wisdom to a new generation of Bangladeshis who are determined to build a constitutional order worthy of the sacrifices that brought the nation into being, then it will have served its purpose.

The work continues. The constitutional journey of Bangladesh continues. And the constitutional thought of Mahmudul Islam, brought to bear on the constitutional challenges of a new and perhaps genuinely transformative moment in the country's history, continues to illuminate, to guide, and to demand the intellectual and constitutional seriousness that the project of constitutional democracy has always required and always will.

Welcome to this exploration. Let us begin.

S M Nazmuz Sakib

Dhaka, April 2026

PART ONE

THE ARCHITECT OF CONSTITUTIONAL UNDERSTANDING: LIFE, PHILOSOPHY, AND FOUNDATIONAL JURISPRUDENCE

A Note to the Reader Before Beginning

This textbook is not a simple biography. It is not a hagiography. It does not exist to build a monument to a man who is already memorialized within the law libraries, courtrooms, and legal imaginations of an entire nation. Rather, this work exists to do something far more challenging and far more necessary: to think through the constitutional philosophy of Mahmudul Islam with the same seriousness, the same critical rigor, and the same intellectual courage that he himself brought to the study of Bangladesh's supreme law.

Mahmudul Islam was a lawyer of extraordinary ability, an Attorney General of the People's Republic of Bangladesh, the first scholar to write a systematic, comprehensive book on the constitutional law of Bangladesh, and a man whose written thoughts became so deeply woven into the fabric of Bangladeshi constitutional discourse that it is now virtually impossible to read a serious judicial opinion, a legal academic paper, or a bar association argument without encountering his influence, directly or indirectly. His book, "Constitutional Law of Bangladesh," went through multiple editions, grew from a modest first publication under the auspices of the Bangladesh Institute of Law and International Affairs in 1995 to the expanded and authoritative third edition published by Mullick Brothers in 2012. It became, in the language of the legal profession, a standard authority, meaning that courts cite it, lawyers use it, students learn from it, and judges refer to it in the same way they refer to Dicey on the British Constitution or Seervai on the Indian Constitution.

But to treat Islam's work as merely an authority, as a book one picks up to find the right answer to a constitutional question, is to fundamentally misunderstand both the man and the project he undertook. Constitutional law is not a collection of right answers. It is a conversation, sometimes heated, sometimes philosophical, sometimes profoundly political, about the nature of power, the limits of the state, the rights of individuals, and the meaning of the promises that a political community makes to itself when it writes down its foundational law. Mahmudul Islam understood this, and his book reflects it. He did not simply describe Bangladesh's constitution. He interrogated it, historicized it, compared it, and subjected it to the kind of critical legal and philosophical analysis that transforms a legal text into a living constitutional order.

This textbook seeks to do for Islam's constitutional thought what Islam himself did for Bangladesh's constitution: to open it up, to historicize it, to subject it to comparative and philosophical scrutiny, and to ask what it means for the constitutional life of a nation that continues to change, to struggle, and to aspire.

The work before you is organized into eight parts. Part One, which you are now reading, covers the essential biographical and intellectual foundations: who Mahmudul Islam was, where he came from, what intellectual traditions shaped him, what philosophical commitments animated his constitutional thinking, and how his life intersected with the great constitutional moments of Bangladesh's history, including the birth of the 1972 Constitution, the years of military rule and constitutional subversion, the restoration of democracy, and the ongoing debates about constitutional reform that continue into the present day, reaching a new and dramatic intensity with the July 2024 uprising and the constitutional reform agenda of 2025 and 2026.

CHAPTER ONE: ORIGINS, FORMATION, AND THE MAKING OF A LEGAL MIND

1.1 Birth into the World of Law

Mahmudul Islam was born on July 24, 1936, in the city of Rangpur, which is situated in the northwestern region of what was then the Bengal Presidency of British India. Rangpur is an ancient city. Its name appears in the records of the Mughal Empire. It served as a seat of regional administration under the British East India Company and later under the British Crown. It was in this city, with its long history of legal and administrative institutions, that Mahmudul Islam first entered a world in which law was not an abstraction but a living profession, a daily reality, and a family tradition.

His father, Azizul Islam, was a lawyer of some standing in Rangpur. The significance of this biographical detail should not be underestimated. In the social world of British India and then of East Pakistan, and particularly in the professional world of the bar, having a lawyer for a father was not simply a matter of economic background or social status, though it was that too. It was also a matter of intellectual formation. A child who grows up in a household where law is practiced, debated, and lived as a professional vocation absorbs certain habits of mind that cannot easily be taught in a classroom. One learns to ask what the rule is, but also why the rule exists, and whether the rule is just. One learns to argue from principle while remaining alert to the facts of particular cases. One develops an intuitive understanding of the relationship between abstract norms and concrete human situations, which is precisely the relationship that lies at the heart of all legal reasoning.

We do not have detailed records of Mahmudul Islam's childhood in Rangpur, of the conversations that took place at the family table, of the cases his father argued in the local courts, or of the legal texts that lined the shelves of his father's library. But we can infer, from the kind of lawyer and scholar that Mahmudul Islam became, that this early formation in a household touched by the law was not without its influence. The precision of his legal reasoning, the depth

of his historical consciousness, and the ability to connect doctrinal analysis to the larger purposes of the law all suggest a mind that had been thinking about law for a very long time.

1.2 Education: From Rangpur to Dhaka to Indiana

Mahmudul Islam completed his Higher Secondary Certificate examination at Carmichael College in Rangpur, one of the oldest and most distinguished educational institutions in the region, established in 1916 and named after the then-Lieutenant Governor of Bengal, Lord Carmichael. It was an institution with a strong tradition of liberal education, and it is worth pausing to reflect on what that tradition meant in the context of colonial and then post-colonial Bengal.

Liberal education in the British colonial tradition was a complex and, in many ways, a contradictory enterprise. On one hand, it was designed to produce what T.B. Macaulay famously described in his 1835 Minute on Education as a class of persons "Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect." It was explicitly designed to serve the administrative needs of the empire, to create an educated class of colonial subjects who could function as intermediaries between British rulers and the mass of the population. On the other hand, the very education that the British colonial system imparted contained within it the seeds of its own contradiction. It taught people to read Locke and Mill, to understand the theory of natural rights and the social contract, to appreciate the arguments for representative government and the rule of law. And people who had been taught these things were inevitably led to ask why the principles of liberty and self-government that the British celebrated in their own political life were not extended to the people of the subcontinent.

The liberal arts education at institutions like Carmichael College, therefore, was never simply a colonial instrument. It was also a space of intellectual formation in which the future leaders of a nascent anti-colonial movement, and ultimately of an independent nation, developed their political and legal consciousness. Mahmudul Islam was educated in this tradition, and it left its mark on his thinking.

After completing his secondary education in Rangpur, Islam moved to Dhaka, which was then the capital of East Pakistan, the eastern wing of the newly independent state created by the partition of British India in 1947. He enrolled at the University of Dhaka, which had been founded in 1921 and had quickly established itself as the premier institution of higher education in the region. At Dhaka University, Islam studied political science, completing both his Bachelor of Arts and his Master of Arts degrees in the subject by 1957. His choice of political science as his field of study is itself significant. Political science, as it was taught at Dhaka University in the 1950s, was deeply engaged with questions of political philosophy, constitutional theory, comparative government, and international relations. It was not yet the quantitative social science that it would become in many Western universities; it remained fundamentally a humanistic discipline, concerned with normative questions about justice, power, and the proper organization of political life.

Having completed his political science degrees, Islam then turned to law. He earned his Bachelor of Laws (LLB) degree from the University of Dhaka in 1959. The combination of a political

science background with formal legal training would prove to be the defining intellectual architecture of his career as a constitutional scholar. Political science gave him the theoretical and comparative framework; law gave him the doctrinal precision and the technical vocabulary. Together, they equipped him to do what very few lawyers in Bangladesh could do: to write about constitutional law not merely as a technical subject but as a branch of political philosophy, to analyze constitutional provisions not merely as texts to be interpreted but as expressions of deeper political and moral commitments.

Islam began his legal career at the Rangpur District Bar in 1961, returning to his hometown to practice law. He was enrolled at the High Court in 1967, which brought him to Dhaka and to the center of Bangladesh's (then East Pakistan's) legal and political life at a moment of extraordinary historical turbulence. The late 1960s in East Pakistan were years of growing political tension, linguistic and cultural assertiveness, and the gradual accumulation of grievances that would ultimately explode into the Liberation War of 1971. Islam was practicing law during these years, working as a junior with the distinguished lawyer Birendra Nath Chowdhury and then with Syed Ishtiaq Ahmed, one of the most prominent constitutional lawyers of the era.

After the independence of Bangladesh in 1971, Islam received his Master of Laws (LLM) degree from Indiana University in the United States in 1980. Indiana University's School of Law, particularly its Bloomington campus, had established itself as a serious institution for the study of comparative and international law, and Islam's time there deepened his engagement with American constitutional jurisprudence, comparative constitutional law, and the international dimensions of constitutional theory. The LLM from Indiana would later enrich the comparative dimension of his scholarship, allowing him to draw on American constitutional doctrine and theory in his analysis of Bangladesh's own constitutional framework.

1.3 The Arc of a Career

Between his return from Indiana and the publication of his landmark book in 1995, Mahmudul Islam had already established himself as one of the leading constitutional lawyers in Bangladesh. He was enrolled as an advocate of the Appellate Division of the Supreme Court of Bangladesh in 1972, within months of Bangladesh's independence, and served as an Assistant Attorney General from 1972 to 1976, a period that coincided with some of the most turbulent years in Bangladesh's constitutional history.

The significance of Islam's career between 1972 and the publication of his book cannot be overestimated. He was not a scholar who practiced law on the side, nor was he a practitioner who dabbled in academic writing. He was, in the truest sense, a lawyer-scholar, a man whose deep engagement with constitutional theory was constantly tested and refined by the practical demands of constitutional litigation. He argued cases before the Supreme Court at a time when the constitutional order itself was under challenge, when martial law proclamations were being tested against constitutional provisions, when fundamental rights were being suspended and then restored, when the very foundations of Bangladesh's constitutional architecture were being built, demolished, and rebuilt in rapid and sometimes violent succession.

This experience of practicing constitutional law in a constitutional environment that was genuinely unstable, genuinely contested, and genuinely consequential gave Islam's scholarship a quality that purely academic constitutional scholarship often lacks: a sense of urgency, a recognition that constitutional questions are not merely intellectual puzzles but matters of practical importance for the lives and liberties of real people. When he wrote about the fundamental rights provisions of the 1972 Constitution, he was writing about provisions that he had seen suspended, violated, and restored. When he wrote about judicial review, he was writing about a power that he had seen exercised with courage and then undermined by executive action. When he wrote about the separation of powers, he was writing about a principle that he had seen bent almost to the breaking point.

Islam served as the 10th Attorney General of Bangladesh from 1998 to 2001, during the administration of Prime Minister Sheikh Hasina. The role of the Attorney General in Bangladesh's constitutional system is one of enormous importance and considerable complexity. The Attorney General is the government's chief legal officer, responsible for representing the government before the courts, advising the government on legal matters, and, crucially, appearing on behalf of the state in constitutional cases. The role requires a lawyer who is simultaneously deeply loyal to the constitutional order and deeply knowledgeable about the constitutional law that defines and limits the government's power. It is not an easy combination to maintain, and the history of attorneys general in various jurisdictions is full of examples of individuals who tilted too far in one direction or the other, becoming either political mouthpieces or judicial activists who undermined their own institutional role.

Islam's tenure as Attorney General was marked by his characteristic combination of technical legal excellence and constitutional integrity. The Supreme Court called upon him to serve as *amicus curiae*, a friend of the court, in several significant constitutional cases, a recognition of the breadth and depth of his constitutional knowledge and of the respect in which he was held both by the bench and by the bar.

He passed away on February 16, 2016, at the age of 79, after a period of serious illness. His death was mourned across Bangladesh's legal and intellectual community, and tributes poured in from judges, lawyers, law professors, and politicians. The Daily Star, one of Bangladesh's most influential English-language newspapers, published a tribute that described him as "a banyan tree of wisdom," an image that captures something essential about Islam's place in Bangladesh's constitutional culture: not merely a great individual contributor but a presence under whose shade many others had found shelter and from whose roots many branches of constitutional understanding had grown.

CHAPTER TWO: THE CONSTITUTIONAL CONTEXT: FROM PAKISTAN TO LIBERATION TO THE 1972 CONSTITUTION

2.1 The Constitutional Heritage of the Subcontinent

To understand Mahmudul Islam's constitutional thought, one must begin by understanding the constitutional world into which he was born and in which his legal mind was formed. The constitutional history of the Indian subcontinent in the twentieth century is one of the great dramas of modern political and legal history. It encompasses the slow decline and eventual collapse of British imperial rule, the partition of the subcontinent along religious lines in 1947, the emergence of two independent states with radically different constitutional visions, the further partition of Pakistan in 1971 and the emergence of Bangladesh as an independent nation, and then the long and difficult process of constructing a viable constitutional order in a country born out of war, devastated by violence, and wrestling with the profound questions of national identity, political authority, and social justice.

The constitutional inheritance that Bangladesh received in 1971 was layered and complex. On one level, there was the institutional inheritance of British colonialism: the court system, the legal profession, the structures of administrative law, the tradition of written statutes and judicial precedent, the concept of the rule of law and judicial independence, all of which had been transplanted from Britain to the subcontinent over a period of more than a century and had taken root, transformed in the process, in the soil of South Asian political culture.

On another level, there was the immediate constitutional heritage of Pakistan, whose 1956 Constitution had been the first formal constitutional document for the territory that would become Bangladesh, and whose 1962 Constitution had created the Presidential system of government that had governed East Pakistan (Bangladesh's predecessor) until the Liberation War. And on yet another level, there was the heritage of the Indian Constitution of 1950, which had been adopted just across the border and which exercised a powerful intellectual and jurisprudential influence on constitutional thinkers throughout the subcontinent.

2.2 The Language Movement and Constitutional Consciousness

Before discussing the 1972 Constitution itself, it is essential to understand the political and cultural forces that shaped the constitutional consciousness of the generation of Bangladeshis who would eventually write that constitution. Chief among these forces was the Language Movement of 1952.

The Language Movement was, at its core, a constitutional and political dispute about the status of the Bengali language in Pakistan. When Pakistan was established in 1947, the central government, dominated by West Pakistani politicians and bureaucrats, declared Urdu to be the sole national language of the new state, despite the fact that Bengali was the mother tongue of the majority of Pakistan's population, including the entire population of East Pakistan. For Bengali-speaking East Pakistanis, this was not merely a linguistic grievance. It was a statement about the hierarchy of cultures within the new state, a declaration that East Pakistani identity and culture were subordinate to West Pakistani identity and culture, and ultimately a challenge to the principle of democratic equality that was supposed to be foundational to the Pakistani state.

The student protests of February 21, 1952, during which the police opened fire on students demonstrating in support of Bengali language rights, killing several students, became one of the foundational moments of Bangladeshi national consciousness. February 21 is now observed as

International Mother Language Day, a recognition by the international community of the universal significance of linguistic rights and cultural dignity. But for Bangladesh, it has a more specific and more personal meaning: it is the day on which the seeds of what would eventually become the independence movement were planted in the political consciousness of the Bengali people.

The Language Movement established a pattern of constitutional thinking that would recur throughout Bangladesh's political history and that would leave its mark on Mahmudul Islam's constitutional scholarship: the understanding that a constitution is not merely a technical document establishing the organs of government, but a statement of fundamental values, and that the most basic of those values is the recognition and respect for the identity and dignity of the people. A constitution that fails to honor the language, culture, and identity of its citizens is not merely incomplete; it is unjust, and an unjust constitution lacks the moral authority that is necessary to command the genuine obedience of a political community.

2.3 The Long Road to Liberation

The years between 1952 and 1971 were years of gradually deepening political crisis in Pakistan, as the fundamental incompatibility between the democratic aspirations of East Pakistan's majority population and the political dominance of West Pakistan's ruling elites became increasingly apparent. The story of how this crisis culminated in the Liberation War of 1971 is too long and too complex to be told in full here, but certain key moments must be noted because they shaped the constitutional thinking of Mahmudul Islam's generation.

The general elections of December 1970 were a crucial turning point. In those elections, the Awami League, led by Sheikh Mujibur Rahman, won an absolute majority in the National Assembly of Pakistan, winning 160 out of 300 general seats. The majority of the Awami League's votes came from East Pakistan, where it won 167 out of 169 seats. Under any normal democratic logic, this result should have led to the formation of an Awami League government. But the Pakistani military establishment and the West Pakistani political leadership, particularly Zulfikar Ali Bhutto of the Pakistan Peoples Party, refused to accept this outcome. Bhutto threatened to boycott the assembly if the Awami League formed the government. The military government of Yahya Khan postponed the convening of the National Assembly.

This refusal to honor the democratic verdict of the 1970 election was, at its core, a constitutional crisis of the most fundamental kind. It was a rejection of the principle that political authority derives from the consent of the governed, expressed through free and fair elections. Sheikh Mujibur Rahman responded by announcing a non-cooperation movement, and on March 7, 1971, he delivered his historic speech at the Ramna Race Course in Dhaka, in which he effectively declared the political independence of Bangladesh while stopping just short of a formal declaration of independence.

On March 25, 1971, the Pakistan Army launched Operation Searchlight, a brutal military crackdown on the Bengali population of East Pakistan. The killing, rape, and destruction that followed, over the course of nine months, has been described by historians and legal scholars as one of the most significant episodes of mass atrocity in the post-World War II period. The

Bangladesh Liberation War ended on December 16, 1971, with the surrender of Pakistani forces and the establishment of an independent Bangladesh.

2.4 The 1972 Constitution: A Document of Aspirations

The Constitution of the People's Republic of Bangladesh was adopted by the Constituent Assembly on November 4, 1972, and came into force on December 16, 1972, exactly one year after Bangladesh's military victory. It was a document drafted under extraordinary circumstances and in an extraordinarily short time: the Constituent Assembly had been convened in the aftermath of a devastating war of liberation, the country was in a state of physical and economic devastation, and the political leadership was under enormous pressure to establish a functioning constitutional order as quickly as possible.

Notwithstanding these constraints, the 1972 Constitution was in many ways a remarkable document. It established Bangladesh as a unitary, parliamentary republic, with a Westminster-style system of government in which the executive was responsible to the legislature and the head of government was the Prime Minister rather than the President. It declared four fundamental principles of state policy, borrowing from the political ideology of Sheikh Mujibur Rahman, known as Mujibism or Mujibbad: nationalism, socialism, democracy, and secularism.

The Constitution also contained an extensive bill of rights, guaranteeing a range of civil and political rights including the right to equality before the law and equal protection of the law (Article 27), the right against discrimination on grounds of religion, race, caste, sex or place of birth (Article 28), equality of opportunity in public employment (Article 29), the right to protection of law (Article 31), protection of the right to life and personal liberty (Article 32), safeguards against arrest and detention (Article 33), prohibition of forced labor (Article 34), protection against double jeopardy and self-incrimination (Article 35), freedom of movement (Article 36), freedom of assembly (Article 37), freedom of association (Article 38), freedom of thought, conscience, and speech (Article 39), freedom of profession or occupation (Article 40), freedom of religion (Article 41), the right to property (Article 42), and the right to protection of home and correspondence (Article 43).

Significantly, the Constitution also included a set of Fundamental Principles of State Policy (Part II), which established directive principles of governance including the promotion of local government institutions, the separation of the judiciary from the executive, free and compulsory education, public health, equal rights for women, the rights of minorities, and the development of disadvantaged areas. These directive principles, while not directly justiciable in court, were intended to guide the legislature and executive in framing law and policy, and they represented a vision of social justice that went beyond the merely formal equality of liberal constitutionalism.

The 1972 Constitution also established a Supreme Court with two divisions: the High Court Division and the Appellate Division. The High Court Division was given original jurisdiction to enforce fundamental rights and to issue directions, orders, and writs, including the writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. The Appellate Division was given appellate jurisdiction over decisions of the High Court Division. This two-tier structure of the Supreme Court, directly adapted from the Pakistani and ultimately from the British

constitutional tradition, would become one of the central subjects of Mahmudul Islam's constitutional analysis.

2.5 Constitutional Subversion: Martial Law and Its Consequences

The 1972 Constitution was barely in place before it began to be undermined. The fourth amendment of 1975 abolished the parliamentary system of government and established a presidential system, creating what amounted to a one-party state under Sheikh Mujibur Rahman's newly formed Bangladesh Krishak Sramik Awami League (BAKSAL). This radical transformation of the constitutional order was achieved through a formal amendment process, using the parliamentary supermajority that the Awami League possessed, but its substance was deeply anti-constitutional in spirit: it concentrated all power in the executive, abolished the multi-party system, dramatically curtailed press freedom, and effectively suspended the functioning of the constitutional order that had been established just three years earlier.

The political crisis that followed the fourth amendment culminated in the assassination of Sheikh Mujibur Rahman and most of his family on August 15, 1975. A series of political upheavals followed, ending with the consolidation of power by General Ziaur Rahman, who proclaimed martial law and suspended the constitution. The fifth amendment to the constitution, passed by a martial law government in 1979, ratified the martial law proclamations and changes made between 1975 and 1979, inserting the words "Bismillah-ir-Rahman-ir-Rahim" (In the name of Allah, the Merciful, the Beneficent) into the preamble and making Islam the state religion in later amendments.

The seventh amendment of 1986 ratified the martial law proclamations of General Hussain Muhammad Ershad, who had taken power in another military coup in 1982. The eighth amendment of 1988 declared Islam the state religion, a change that was deeply controversial and that generated a constitutional dispute that persisted for decades.

Mahmudul Islam lived through all of these constitutional upheavals as a practicing constitutional lawyer. He saw the constitution made, unmade, and remade. He saw fundamental rights suspended, restored, and suspended again. He saw the courts struggle with the question of how to respond to martial law proclamations that explicitly purported to override the constitutional order. He developed, through this experience, a constitutional philosophy that was fundamentally skeptical of executive overreach, deeply committed to judicial independence, and strongly attached to the principle of constitutional supremacy.

2.6 The Restoration of Democracy and the Twelfth Amendment

After years of military rule under Ershad, a popular uprising in 1990 led to the restoration of democratic government. The twelfth amendment of 1991 restored the parliamentary system of government that had been established by the original 1972 Constitution, undoing the shift to a presidential system that had been made by the fourth amendment and maintained through the years of military rule.

The restoration of the parliamentary system was a constitutional moment of great significance, and it generated important questions that Mahmudul Islam would address in his constitutional scholarship: What was the proper relationship between the Prime Minister and the President in a parliamentary system? What were the constitutional conventions that governed the exercise of executive power? How could the constitution be interpreted to prevent the recurrence of the executive dominance and parliamentary subordination that had characterized the Ershad years?

The non-party caretaker government system, introduced by the thirteenth amendment in 1996, was another response to the perceived vulnerability of Bangladesh's constitutional order to partisan manipulation of elections. The caretaker government concept, which provided for the transfer of executive power to a neutral, non-partisan administration during the period between the dissolution of parliament and the holding of new elections, was a distinctive Bangladeshi constitutional innovation, a pragmatic response to the specific problem of ensuring free and fair elections in a political environment characterized by intense partisan distrust.

Islam wrote about the caretaker government system with the precision and depth that the subject deserved, recognizing it as both a creative constitutional solution to a real problem and a source of new constitutional questions about the nature of executive power and democratic accountability during inter-election periods.

CHAPTER THREE: THE CONSTITUTIONAL LAW OF BANGLADESH: A BOOK THAT BECAME AN INSTITUTION

3.1 The Genesis of the Book

The first edition of "Constitutional Law of Bangladesh" was published in 1995 by the Bangladesh Institute of Law and International Affairs (BILIA). It was a substantial volume of more than 700 pages, including appendices, and it covered the full range of constitutional law topics from the historical and conceptual foundations of the constitution through the fundamental principles of state policy, the fundamental rights, the structures of government, the relationship between the legislature and executive, the judiciary and judicial review, the constitutional amendment procedure, and the emergency powers provisions.

To understand what Islam was doing in this book, it is necessary to appreciate the state of constitutional law scholarship in Bangladesh in 1995. The country was by then almost twenty-five years old, and it had produced a generation of trained lawyers and a growing body of constitutional jurisprudence in its courts. But it had not yet produced a comprehensive, systematic scholarly treatment of its constitutional law. There were statutory compilations and legal directories, there were textbooks on specific areas of law, there were academic articles and occasional papers, but there was no single authoritative work that attempted to synthesize and analyze the whole of Bangladesh's constitutional law in the systematic way that constitutional scholars in other jurisdictions had done for their own constitutional systems.

This gap was not merely an academic inconvenience. It had practical consequences for the quality of constitutional adjudication, for the development of constitutional doctrine, and for the ability of lawyers and judges to engage in the kind of principled constitutional reasoning that a constitutional democracy requires. When there is no authoritative secondary literature on constitutional law, constitutional adjudication tends to become either mechanical and textual, treating the constitution as a statute to be literally interpreted rather than a living document to be purposively understood, or it becomes unpredictably impressionistic, with different judges bringing different and sometimes inconsistent approaches to the same constitutional questions.

Islam's book addressed this gap directly. It provided the conceptual framework, the historical context, the comparative perspective, and the analytical tools that practitioners, judges, and students needed to engage seriously with Bangladesh's constitutional law. In doing so, it performed the same intellectual service that scholars like A.V. Dicey had performed for British constitutional law, that Madison, Hamilton, and Jay had performed for American constitutional law through the Federalist Papers, and that scholars like M.P. Jain and H.M. Seervai had performed for Indian constitutional law.

3.2 The Structure and Methodology of the Book

The structure of Islam's constitutional law book reflects a sophisticated and carefully considered methodology. The book does not begin with the text of the constitution and proceed article by article in a mechanical commentary. Instead, it begins by situating Bangladesh's constitutional law within its broader historical, comparative, and philosophical context.

The opening chapters establish the historical foundation: the constitutional history of the subcontinent, the constitutional inheritance from British India and Pakistan, the circumstances of Bangladesh's independence, and the drafting of the 1972 Constitution. This historical grounding is essential to Islam's interpretive approach, because he consistently argues that the meaning of constitutional provisions cannot be understood without reference to the historical circumstances in which they were drafted and the purposes they were intended to serve.

This approach reflects what constitutional theorists call "originalism" in one of its more sophisticated forms, though it is better described as purposive or contextual originalism rather than the more strictly textualist form of originalism associated with American judicial conservatism. Islam was not interested in recovering the specific "original intent" of individual framers, which in any case would be a difficult and perhaps impossible task given the circumstances under which the 1972 Constitution was drafted. He was interested in recovering the animating purposes of the constitutional project as a whole, the broad values and commitments that the constitution was designed to express and protect.

Following the historical foundation, the book proceeds through the fundamental principles of state policy, the fundamental rights, the structures of government (including the legislature, the executive, and the judiciary), the constitutional amendment procedure, and the emergency provisions. Throughout, Islam combines close textual analysis of specific constitutional provisions with broader jurisprudential and philosophical reflection on the meaning and significance of those provisions.

The comparative dimension of the book is one of its most distinctive and valuable features. Islam draws extensively on constitutional jurisprudence from India, the United Kingdom, the United States, Australia, Canada, and Pakistan, among other jurisdictions. This comparative perspective is not merely decorative. It serves a specific analytical purpose: it allows Islam to identify what is distinctive about Bangladesh's constitutional approach to particular questions by contrasting it with the approaches taken in other systems, and it provides a reservoir of interpretive resources that can be drawn upon to fill gaps or resolve ambiguities in Bangladesh's own constitutional doctrine.

The Indian jurisprudence is particularly prominent in Islam's analysis, for reasons that are both historical and conceptual. Historically, Bangladesh and India share a common constitutional heritage from the British colonial period and from the constitutional traditions that developed in the subcontinent after independence. Conceptually, the Indian Supreme Court had by the 1990s developed an extraordinarily rich body of constitutional jurisprudence, particularly on fundamental rights, that addressed many of the same questions that arose in the context of Bangladesh's own constitution.

3.3 The Authority of the Book: Why Courts Cite It

One of the most remarkable features of Islam's constitutional law book is the degree to which it became a standard authority in Bangladesh's courts. The Appellate Division and the High Court Division of the Supreme Court cite the book regularly, treating it as an authoritative statement of constitutional principle that can inform judicial reasoning and that can be invoked in support of or against particular constitutional arguments.

This pattern of judicial citation of secondary scholarly literature, which is standard practice in some constitutional systems (notably the British and Canadian) but less common in others (particularly the American, where the citation of academic scholarship in judicial opinions has historically been more limited), reflects something important about the nature of constitutional adjudication in Bangladesh. It reflects the recognition that constitutional law is not simply a matter of reading the text of the constitution and applying it mechanically, but requires engagement with the broader conceptual and philosophical framework within which constitutional provisions have meaning.

When a judge cites Islam's book, she or he is doing more than acknowledging a particular scholar's opinion. She or he is drawing on a carefully developed and systematically presented body of constitutional principle that has been constructed through decades of scholarly and professional engagement with the specific problems of Bangladesh's constitutional order. This is precisely the function that serious constitutional scholarship is meant to perform in a constitutional democracy.

The authority of the book also reflects something about the nature of the Bangladeshi legal culture. Bangladesh's legal system is a common law system, heir to the tradition of English law that was established in the subcontinent during the British period. In the common law tradition, the development of law is understood to be a collaborative enterprise between legislatures, courts, and scholars. Scholars play a role in systematizing the law, identifying its gaps and

inconsistencies, proposing principled resolutions to contested questions, and developing the conceptual vocabulary through which law is understood and applied. Islam's book performed all of these functions for Bangladesh's constitutional law, and its authority in the courts is a recognition of this contribution.

3.4 The Three Editions and the Evolution of Constitutional Thought

The three editions of Islam's constitutional law book, published in 1995, 2002, and 2012 respectively, provide a kind of running commentary on the evolution of Bangladesh's constitutional order over nearly two decades. Each edition was substantially revised and expanded to take account of new constitutional developments: new legislation, new court decisions, new political events, and new theoretical perspectives.

The first edition, published in 1995, appeared in a period of newly restored democratic government following the fall of the Ershad regime. It reflected the optimism of this restoration and the hope that Bangladesh's constitutional order might finally be allowed to develop in accordance with its original democratic and rights-respecting foundations. At the same time, it bore the marks of the long experience of constitutional subversion: Islam was acutely aware, throughout the book, of the ways in which constitutional provisions could be manipulated, circumvented, or undermined by governments that placed political interests above constitutional principles.

The second edition, published in 2002, appeared in the aftermath of the turbulent years of the 1990s, which had seen the introduction of the caretaker government system, the elections of 1996 and 2001, and the ongoing debates about constitutional reform. Islam updated the book to take account of the new constitutional jurisprudence that had developed in these years and to address the new constitutional questions that had arisen.

The third and final edition, published in 2012, appeared in a period of significant political tension and constitutional controversy. The Awami League government that had come to power in 2009 had by then passed the fifteenth amendment to the constitution, which was one of the most sweeping constitutional changes since the restoration of democracy in 1991. The fifteenth amendment, among other things, abolished the caretaker government system, a change that Islam and others regarded with deep concern, and restored some of the original provisions of the 1972 Constitution, including the four fundamental principles. Islam's treatment of these changes in the third edition reflects his characteristically thoughtful and measured approach: he analyzed the constitutional validity of the changes, their implications for the constitutional order, and the jurisprudential questions they raised, without simply accepting or rejecting the government's justifications.

CHAPTER FOUR: THE PHILOSOPHICAL AND JURISPRUDENTIAL FOUNDATIONS OF MAHMUDUL ISLAM'S CONSTITUTIONAL THOUGHT

4.1 Constitutional Philosophy and Its Foundations

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Constitutional philosophy is concerned with the most fundamental questions about the nature and justification of constitutional government. What is a constitution? Why should a political community bind itself through a constitution rather than simply making political decisions through ordinary democratic processes? What makes a constitutional order legitimate? How should constitutional provisions be interpreted? What is the proper role of unelected judges in a democratic system? These are questions that constitutional theorists have debated for centuries, and they continue to be debated with great intensity in the twenty-first century.

Mahmudul Islam was not primarily a constitutional philosopher in the academic sense; he was a constitutional lawyer and practitioner who brought philosophical depth to his legal work. But his constitutional law book is permeated by philosophical assumptions and commitments that it is worth making explicit. Understanding these philosophical foundations is essential to understanding both the strengths and the limitations of his constitutional thought.

4.2 Constitutional Supremacy and the Grundnorm

The most fundamental philosophical commitment in Islam's constitutional thought is his attachment to the principle of constitutional supremacy. This is the principle that the constitution is the supreme law of the state, that all other laws must conform to the constitution, and that any law that is inconsistent with the constitution is, to the extent of the inconsistency, void. Article 7 of the Bangladesh Constitution expresses this principle directly: "All powers in the Republic belong to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution. This Constitution is, as the expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

Islam's treatment of this principle in his constitutional law book draws on the concept of the Grundnorm, or basic norm, developed by the Austrian legal philosopher Hans Kelsen. Kelsen argued that every legal system must have a foundational norm, a basic norm, from which all other norms in the system derive their validity. This basic norm cannot itself be derived from any higher legal norm; it is presupposed by the legal system as the ultimate source of legal validity. For Kelsen, the basic norm is not a substantive moral principle but a formal presupposition that makes it possible to understand a body of norms as a unified legal system.

Islam adapted this concept to the Bangladesh constitutional context, arguing that the 1972 Constitution functions as the Grundnorm of Bangladesh's legal system, the foundational document from which all other laws derive their validity and to which all other laws must conform. But he also went beyond Kelsen's purely formal account in an important way: he argued that Bangladesh's constitutional Grundnorm is not merely a formal presupposition but has a substantive content, expressed in the fundamental principles of the constitution and in its fundamental rights provisions. The constitution is supreme not merely because it is formally the highest-ranking legal norm but because it expresses the fundamental values of the political community: democracy, human dignity, justice, equality, and the rule of law.

This substantive understanding of constitutional supremacy has important implications for constitutional interpretation. If the constitution's supremacy is understood purely formally, then

constitutional interpretation becomes a matter of formal consistency: does the challenged law comply with the literal terms of the constitutional text? But if the constitution's supremacy is understood substantively, as Islam understood it, then constitutional interpretation becomes a matter of purposive analysis: does the challenged law comply not merely with the literal terms of the constitutional text but with the fundamental values and purposes that the constitution is designed to protect?

4.3 Natural Law, Positivism, and the Middle Path

One of the most interesting philosophical tensions in Islam's constitutional thought is between natural law and legal positivism. Natural law theory holds that law derives its validity from moral principles that exist independently of positive legal enactment. A law that violates basic moral principles is not merely unjust; it is not really law at all. Legal positivism, by contrast, holds that law is simply a social fact, a set of norms that have been enacted through recognized procedures by recognized authorities. The validity of law is a matter of its social source, not its moral content. An unjust law is still a law; it simply demands to be changed.

Islam's constitutional thought navigates between these two positions in a way that reflects both his intellectual sophistication and the practical demands of constitutional adjudication. On the one hand, he is clearly committed to a substantive conception of constitutional values that goes beyond purely formal positivism. His insistence that constitutional provisions must be interpreted purposively, in light of the fundamental values of democracy, human dignity, and justice, reflects a natural law sensibility: the constitution is not merely a positive enactment but an expression of moral commitments that have independent normative force.

On the other hand, Islam is not a simple natural law theorist. He is deeply aware of the institutional constraints within which constitutional adjudication takes place, of the risks of judicial overreach, and of the need for legal certainty and predictability. He does not argue that courts should simply strike down laws that they consider morally objectionable, regardless of the constitutional text. He argues for purposive constitutional interpretation, an approach that is grounded in the constitutional text and its history but that reads the text in light of its animating values rather than in a purely literal or mechanical way.

This middle position, which can be described as constitutionally immanent moral reasoning, is reflected in some of the most important constitutional jurisprudence of the late twentieth and early twenty-first centuries. It is the approach characteristic of constitutional courts in Germany, South Africa, Canada, and India, all of which have developed sophisticated bodies of constitutional doctrine that take seriously both the positive content of constitutional texts and the moral commitments those texts are designed to express.

Islam was ahead of his time in adopting this approach within the Bangladeshi context, and his constitutional law book helped to establish it as the dominant methodological orientation of Bangladeshi constitutional adjudication.

4.4 The Social Contract and Constitutional Legitimacy

The concept of the social contract plays an important, if often implicit, role in Islam's constitutional thought. The social contract tradition, associated with philosophers like John Locke, Jean-Jacques Rousseau, and Immanuel Kant, holds that legitimate political authority is founded on the consent of the governed. Political institutions derive their authority from the agreement, whether actual or hypothetical, of those who are subject to them. A government that violates the terms of the social contract, that rules without the consent of the governed or that fails to protect the fundamental rights of citizens, loses its claim to legitimate authority.

Islam's treatment of constitutional supremacy and popular sovereignty reflects this social contract framework. He consistently argues that Bangladesh's constitution derives its authority not from the fact of its formal enactment but from the fact that it expresses the will and consent of the people of Bangladesh. Article 7 of the constitution, with its declaration that "all powers in the Republic belong to the people," is read by Islam not merely as a formal statement about the ultimate source of state power but as a substantive commitment to democratic self-government, to the principle that political authority is exercised on behalf of and with the consent of the people.

This social contract foundation of constitutional legitimacy also explains Islam's deep opposition to martial law and to the kinds of constitutional subversion that Bangladesh experienced during the periods of military rule. Martial law, by its very nature, is a rejection of the social contract. It asserts that the military can override the will of the people, can suspend the constitution that expresses that will, and can govern by force rather than consent. For Islam, this was not merely politically objectionable; it was constitutionally illegitimate. The constitution, as the expression of the people's will, cannot be suspended or overridden by an unelected military establishment without destroying the very foundation of legitimate political authority.

4.5 Lon Fuller and the Inner Morality of Law

The American jurisprudential philosopher Lon Fuller proposed, in his 1964 work "The Morality of Law," that law has an inner morality, a set of procedural requirements that any genuine legal system must satisfy. These requirements include generality (laws must be stated in general terms rather than being directed at specific individuals), publicity (laws must be publicly announced), non-retroactivity (laws must not punish people for actions that were not illegal when they were performed), clarity (laws must be stated in terms clear enough for ordinary people to understand), non-contradiction (laws must not contradict each other), possibility (laws must not require the impossible), constancy (laws must not change so frequently that people cannot plan their lives around them), and congruence (the rules as announced must be the rules as actually administered).

Fuller's inner morality of law has been controversial among jurisprudential scholars, with critics like H.L.A. Hart arguing that Fuller's requirements are not truly moral requirements but merely pragmatic conditions for an efficient legal system. But whatever one thinks of the theoretical debate, Fuller's account captures something important about the relationship between legal form and substantive justice that is highly relevant to constitutional law.

Islam's constitutional thought reflects a deep sympathy with Fuller's insights, even if he does not cite Fuller directly in every context. His analysis of the fundamental rights provisions of Bangladesh's constitution consistently emphasizes their procedural as well as their substantive dimensions. The right to a fair trial, the prohibition against retrospective punishment, the requirement of due process in any interference with fundamental rights, all of these reflect the Fullerian insight that the way law is made and applied is not merely a technical matter but a moral one, that procedural justice is a component of substantive justice and not merely a means to it.

This emphasis on procedural constitutionalism is particularly significant in the Bangladesh context, where the history of constitutional subversion has often taken the form not of the outright abolition of constitutional rights but of their procedural circumvention: the use of technically legal processes to achieve constitutionally impermissible results. Islam's sustained attention to the procedural dimensions of constitutional rights reflects his recognition that constitutional protection of rights is only as strong as the procedural safeguards that enforce it.

4.6 Ronald Dworkin and the Rights Thesis

The American legal philosopher Ronald Dworkin, whose work became enormously influential in constitutional theory in the late twentieth century, argued in his book "Taking Rights Seriously" (1977) and in subsequent works that law consists not only of rules but also of principles, that principles are legally binding even when they are not explicitly stated in any enacted rule, and that the function of legal adjudication is to identify the best principled justification for existing legal materials rather than simply to apply rules mechanically.

Dworkin's "rights thesis" holds that individuals have rights that function as "trumps" against majoritarian political decisions. Even if a majority of citizens would benefit from a law, and even if the law would increase overall social welfare, it may still be constitutionally impermissible if it violates the fundamental rights of individuals. Rights, on this view, are not simply preferences or interests that can be traded off against other preferences and interests in a utilitarian calculus; they are side constraints on what government may do, constraints that reflect the fundamental moral equality of all persons.

Islam's treatment of fundamental rights in Bangladesh's constitution reflects a broadly Dworkinian sensibility, even if the influence is not always explicitly acknowledged. His analysis of the fundamental rights provisions consistently emphasizes their character as genuine constitutional entitlements, not merely as aspirational principles or as interests that must be weighed against competing considerations. He argues for strong judicial enforcement of fundamental rights, for a presumption in favor of rights protection in cases of uncertainty, and for a demanding standard of constitutional justification for any governmental interference with fundamental rights.

This rights-protective orientation of Islam's constitutional thought is particularly significant in light of Bangladesh's history of rights violations during periods of martial law and emergency government. Islam's insistence on taking fundamental rights seriously, on treating them as genuine constitutional entitlements that the courts must enforce against the government, reflects

both a principled philosophical commitment and a hard-won historical understanding of the consequences of allowing those rights to be undermined.

4.7 The German Basic Law and Proportionality

The German Basic Law of 1949, drafted in the aftermath of the Nazi regime and designed to prevent the return of totalitarianism, has become one of the most influential constitutional documents in the world. The Federal Constitutional Court of Germany, the Bundesverfassungsgericht, has developed over the past seven decades an extraordinarily sophisticated body of constitutional doctrine, particularly on fundamental rights, that has exercised a powerful influence on constitutional courts around the world.

One of the most important contributions of German constitutional jurisprudence to global constitutional law is the principle of proportionality. Proportionality analysis holds that any governmental measure that restricts fundamental rights must satisfy a four-part test: the measure must be prescribed by law; it must serve a legitimate governmental objective; it must be suitable or appropriate for achieving that objective; and it must be necessary, meaning that no less rights-restrictive means of achieving the objective is available. Many constitutional systems have added a fifth element: even if the first four conditions are satisfied, the measure must not impose a burden on the affected rights that is disproportionate to the benefit achieved.

Proportionality analysis has spread from Germany to virtually every constitutional system in the world, and it represents one of the most significant developments in constitutional theory and adjudication in the twentieth century. It provides a structured analytical framework for resolving the inevitable tensions between governmental objectives and individual rights, replacing the older approach of simply categorizing certain rights as absolute or certain governmental interests as automatically overriding.

Islam's constitutional law book addresses the question of limitations on fundamental rights with considerable sophistication, drawing on both the text of Bangladesh's constitution and on comparative constitutional jurisprudence to develop a framework for analyzing rights restrictions. The Bangladesh Constitution, in its fundamental rights provisions, includes explicit limitation clauses for many rights, specifying that rights may be restricted on certain grounds, including national security, public order, public health, and public morality. Islam's analysis of these limitation clauses draws on the principle of reasonableness, which is the Bangladeshi and Indian constitutional equivalent of proportionality, and argues that any restriction on fundamental rights must be proportionate to the legitimate objective it seeks to achieve and must not go beyond what is necessary for that purpose.

This proportionality-informed analysis of fundamental rights limitations is one of the most practically important contributions of Islam's constitutional scholarship, because it provides a principled and structured framework for resolving some of the most frequently litigated constitutional questions: the tension between security and liberty, between public order and freedom of expression and assembly, between executive necessity and procedural justice.

CHAPTER FIVE: THE GRUNDNORM OF BANGLADESH: SOVEREIGNTY, CONSTITUENT POWER, AND POPULAR WILL

5.1 The Concept of Sovereignty in Constitutional Theory

The concept of sovereignty is both absolutely central to constitutional law and deeply contested among constitutional theorists. In its classical formulation, associated with the French political philosopher Jean Bodin in the sixteenth century and the English political philosopher Thomas Hobbes in the seventeenth century, sovereignty denotes the absolute, unlimited, and indivisible power of the supreme authority within a political community to make and unmake law. On this classical view, a sovereign cannot be bound by law, because the sovereign is the source of law.

This classical concept of sovereignty creates obvious problems for constitutional government. If the sovereign cannot be bound by law, then constitutional constraints on governmental power are, at most, political agreements that the sovereign may choose to honor or to break. The constitution, on this view, is not a genuine legal constraint on governmental power but merely a description of how the sovereign has chosen to exercise its power.

Constitutional theory has developed various responses to this paradox. One response, associated with the social contract tradition, is to distinguish between the constituted powers of government and the constituent power of the people. The people, in their capacity as the ultimate sovereign authority, constitute the government through the constitution and delegate to it certain powers subject to constitutional constraints. The constituted powers of government, including the legislature, the executive, and the judiciary, are bound by the constitution because they are creatures of the constitution. But the constituent power of the people, which is not itself created by the constitution, remains sovereign and can change or replace the constitution if the people collectively so decide.

Another response, associated with the German jurist Carl Schmitt, is to argue that sovereignty is revealed precisely in exceptional circumstances: the sovereign is the one who decides on the exception, who determines when the normal constitutional order must be suspended in the face of emergency. This Schmittian concept of sovereignty has had a controversial influence on constitutional theory, particularly in its implications for emergency powers and for the question of whether constitutional democracies can legitimately suspend their own constitutional norms in the name of self-preservation.

5.2 Islam's Conception of Popular Sovereignty

Mahmudul Islam's treatment of sovereignty in Bangladesh's constitutional system is grounded in the text of Article 7 of the constitution, which he analyzes with considerable depth and sophistication. Article 7 declares that "all powers in the Republic belong to the people" and that the constitution is "the expression of the will of the people." Islam argues that this provision establishes popular sovereignty as the foundational principle of Bangladesh's constitutional order, meaning that the ultimate source of all political and legal authority in Bangladesh is the people of Bangladesh acting collectively.

But Islam is careful to distinguish between popular sovereignty in its constituent sense and in its ordinary democratic sense. In its constituent sense, popular sovereignty refers to the power of the people, acting through a constituent assembly or other foundational process, to create and adopt a constitution. This constituent power is the source of the constitution's authority and the basis of its claim to bind all subsequent governments and all other legal norms.

In its ordinary democratic sense, popular sovereignty refers to the principle that governmental decisions should reflect the will of the people as expressed through democratic processes, particularly elections. This ordinary democratic sense of popular sovereignty is expressed through the parliamentary system of government established by the constitution, in which the executive is responsible to a legislature that is directly elected by the people.

Islam argues that both senses of popular sovereignty are important, but that they operate at different levels of the constitutional order. The constituent power of the people is prior to and independent of the ordinary constitutional order; it is the power that brought the constitution into existence. The ordinary democratic power of the people is expressed through the constitutional order; it is the power that the people exercise through the constitutional machinery of democratic government.

This two-level account of popular sovereignty has important implications for the constitutional amendment procedure and for the question of what counts as an unconstitutional constitutional amendment. If the constitution is merely the product of one exercise of the people's ordinary democratic power, then a subsequent parliamentary supermajority should be able to amend it in any way it chooses. But if the constitution is the expression of the people's constituent power, a foundational choice about the basic structure of the political community, then subsequent amendments that would fundamentally alter that basic structure might require something more than an ordinary supermajority: they might require a new exercise of the constituent power, such as a referendum or a constituent assembly.

5.3 The Basic Structure Doctrine: India's Contribution and Bangladesh's Adaptation

The Indian Supreme Court's doctrine of the "basic structure" of the constitution, developed in the landmark case of *Kesavananda Bharati v. State of Kerala* (1973), represents one of the most significant and controversial developments in South Asian constitutional jurisprudence. The basic structure doctrine holds that while Parliament has a wide power to amend the Indian Constitution, there are certain "basic features" or "essential features" of the constitution that cannot be destroyed even by a constitutional amendment supported by a parliamentary supermajority. These basic features include, according to the various judgments in *Kesavananda Bharati* and subsequent cases, the supremacy of the constitution, the republican and democratic form of government, the secular character of the constitution, the separation of powers, and the federal character of the constitution, among others.

The basic structure doctrine is philosophically grounded in the distinction between the constituent power and the constituted powers of government. Parliament's power to amend the constitution is itself a constituted power, created and granted by the constitution. Therefore, it must be exercised within constitutional limits, and one of those limits is that it cannot be used to

destroy the basic structure of the constitution itself, the foundational architecture that makes it a constitutional order at all.

Bangladesh's Supreme Court has, over the years, engaged with the basic structure doctrine in a series of important cases, and Mahmudul Islam's constitutional law book provides a detailed and critical analysis of these cases. The question of whether Bangladesh's constitution has a basic structure that is immune from parliamentary amendment is one of the most contested questions in Bangladeshi constitutional jurisprudence, and it is also one of the most consequential, given Bangladesh's history of constitutional manipulation through formal amendment processes.

Islam's analysis of the basic structure doctrine in the Bangladesh context is nuanced and careful. He acknowledges the philosophical force of the doctrine, recognizing that the concept of unlimited parliamentary power to amend the constitution is ultimately self-defeating: a parliament that can amend the constitution to give itself unlimited power has effectively destroyed the constitutional order, including the provision for parliamentary power to amend the constitution. But he is also careful to note the difficulties of the doctrine: who decides what counts as a basic feature of the constitution? On what basis is the distinction between basic and non-basic features drawn? Does not the determination of the basic structure effectively give the judiciary a veto over constitutional amendments, raising serious questions about the appropriate limits of judicial power in a democratic system?

These questions, which Islam raises with characteristic intellectual honesty, have become even more pressing in light of recent constitutional developments. The Supreme Court of Bangladesh, in the Anwar Hossain Chowdhury case (the Eighth Amendment case) in 1989, appeared to endorse a version of the basic structure doctrine, holding that certain features of the constitution, including the supremacy of the constitution, the republican and democratic form of government, and the independence of the judiciary, could not be amended away by Parliament. This decision has had a lasting influence on Bangladeshi constitutional jurisprudence, and it is one of the cases to which Islam devotes most attention in his constitutional law book.

5.4 The Fifth Amendment Case and the Legitimacy of Martial Law

One of the most important constitutional decisions of recent Bangladesh history, which bears directly on the questions of sovereignty, constituent power, and constitutional legitimacy that Islam addressed throughout his career, is the Fifth Amendment case decided by the Appellate Division of the Supreme Court in 2011 (*Bangladesh Italian Marble Works Ltd v. Government of Bangladesh*, popularly known as the Fifth Amendment case).

In this case, the Appellate Division, by a majority decision, declared the fifth amendment to the constitution unconstitutional and void. The fifth amendment had ratified the changes made to the constitution during the period of martial law between 1975 and 1979, including the insertion of Bismillah in the preamble and the substitution of "absolute trust and faith in the Almighty Allah" for "secularism" as a fundamental principle of state policy. The court held that a martial law government, which had come to power by overthrowing the constitutional order, could not validly amend the constitution, because the power to amend the constitution belongs exclusively to the elected Parliament established by the constitution.

This decision has profound constitutional significance, because it asserts the principle that the constituent power and the constituted powers of amendment belong to the people acting through their elected representatives, not to a military establishment that has seized power by force. A martial law government is, by definition, a government without constitutional authority. Its acts may be politically and practically effective, but they are constitutionally void. The constitution, as the expression of the people's constituent power, cannot be amended by a government that lacks the people's mandate.

Islam's constitutional law book, written before this decision was handed down, had already laid the theoretical groundwork for this conclusion in its analysis of constitutional supremacy, popular sovereignty, and the distinction between constituent and constituted powers. The Fifth Amendment case can be read as an application of the theoretical framework that Islam had developed in his scholarship.

5.5 The Doctrine of Necessity and Constitutional Pragmatism

The doctrine of necessity, which holds that certain otherwise unconstitutional acts may be constitutionally valid if they are necessary to address a situation of constitutional emergency for which the constitution provides no adequate remedy, has a complex and contested history in South Asian constitutional jurisprudence. The doctrine was first applied in the Pakistan Supreme Court in the 1955 case of *The State v. Dosso*, in which Chief Justice Munir invoked Hans Kelsen's theory of revolutionary legality to justify the constitutional recognition of a military coup.

The doctrine of necessity has been applied in Bangladesh in various contexts, including the recognition of the legitimacy of the interim government that came to power following the ouster of Sheikh Hasina in August 2024. As the Constitutional Reform Commission's Wikipedia entry notes, the Bangladeshi courts upheld the Yunus government's legitimacy under the doctrine of necessity, on the grounds that Hasina's resignation had created a situation for which there was no adequate constitutional remedy, and an interim government was needed to address urgent matters of state.

Islam's constitutional law book addresses the doctrine of necessity with characteristic caution. He acknowledges the practical reality that constitutional orders sometimes face emergencies that the constitution itself did not anticipate and for which it provides no adequate mechanism. But he is deeply skeptical of the doctrine's potential for abuse, recognizing that it can be invoked to legitimize precisely the kinds of extra-constitutional seizures of power that the constitution is designed to prevent. His analysis emphasizes that the doctrine of necessity should be applied only in the most genuinely exceptional circumstances, that it should be applied narrowly rather than broadly, that any measures taken under the doctrine should be aimed at restoring the constitutional order rather than at consolidating extra-constitutional power, and that the courts should retain the jurisdiction to review whether the conditions for applying the doctrine are genuinely met.

CHAPTER SIX: THE FUNDAMENTAL PRINCIPLES OF STATE POLICY AND THEIR THEORETICAL ARCHITECTURE

6.1 The Four Pillars: Nationalism, Socialism, Democracy, Secularism

Article 8 of the 1972 Constitution declared that "the principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy." These four principles, known collectively as the "four pillars" of the constitution or as the four foundational values of Mujibism, represent the ideological framework within which the entire constitutional project was originally conceived.

Mahmudul Islam's treatment of these four fundamental principles is one of the most philosophically interesting and historically significant parts of his constitutional law book. He analyzes each principle individually, tracing its philosophical and historical roots, examining how it was understood by the framers of the 1972 Constitution, exploring the ways in which its constitutional expression reflects and modifies the more general philosophical concept, and assessing the jurisprudential implications of each principle for the interpretation of other constitutional provisions.

6.2 Nationalism and the Question of Identity

The principle of nationalism as a foundational value of Bangladesh's constitution raises profound philosophical questions about the nature of national identity, the relationship between nationality and citizenship, and the potential tension between national solidarity and individual rights.

Bangladesh nationalism, as understood by the framers of the 1972 Constitution, was primarily a linguistic and cultural nationalism: the conviction that the Bengali-speaking people of Bangladesh formed a distinct national community with its own language, culture, literature, and history, and that this community was entitled to govern itself as an independent nation. This linguistic nationalism had deep roots in the Language Movement of 1952 and in the broader cultural renaissance of Bengali identity that had developed throughout the nineteenth and early twentieth centuries.

The fifth amendment of 1979, passed under General Ziaur Rahman's martial law government, introduced the concept of "Bangladeshi" nationalism as distinct from "Bengali" nationalism. Where the original 1972 Constitution had emphasized the Bengali cultural and linguistic identity of the Bangladeshi nation, Ziaur Rahman's conception of Bangladeshi nationalism emphasized a broader, territorially-based national identity that encompassed all people living within Bangladesh's borders, including the non-Bengali indigenous communities and other minorities, and that incorporated Islam as an important element of national identity alongside Bengali language and culture.

This distinction between Bengali and Bangladeshi nationalism has been a source of profound political and constitutional controversy throughout Bangladesh's history, and it is a controversy to which Islam devotes considerable attention. The tension between the two conceptions of

nationalism reflects deeper questions about the nature of political community and national identity: Is a nation defined primarily by its culture and language (the Herderian conception of the nation as a cultural community), or by its territory and citizenship (the civic nationalist conception of the nation as a political community), or by some combination of the two?

Islam's analysis of nationalism as a constitutional principle is careful not to resolve these philosophical debates definitively, but it does make clear that the original constitutional understanding of nationalism was primarily cultural and linguistic, grounded in the Bengali language movement and the liberation war, and that subsequent modifications of this understanding through constitutional amendments require careful scrutiny of their consistency with the foundational constitutional values.

The recent constitutional reform process initiated by the Constitution Reform Commission in 2024-2025 has revived these debates with new intensity. The Commission's recommendation to replace the category "Bangalees" with "Bangladeshis" as the national designation of the country's citizens directly addresses the tension between Bengali cultural nationalism and Bangladeshi civic nationalism, proposing a resolution that favors the more inclusive civic nationalist conception while explicitly recognizing the rights of all mother languages spoken in Bangladesh as state languages alongside Bengali.

6.3 Socialism and the Constitutional Economy

The principle of socialism as a foundational constitutional value has had a complex and contested history in Bangladesh. The 1972 Constitution's commitment to socialism was understood by the framers in terms of a mixed economy model: the state would play a significant role in directing the economy, controlling key industries and natural resources, redistributing wealth to address economic inequalities, and ensuring that the benefits of economic development were equitably shared among the people. This was not the Soviet model of total state ownership and central planning, but a form of social democracy influenced by the Fabian tradition in British politics and by the more moderate wing of Bengali socialist thought.

The commitment to socialism was substantially diluted through constitutional amendments during the Zia and Ershad periods. The fifth amendment, in particular, replaced "socialism" with the concept of "economic and social justice," a formulation that is considerably more compatible with market capitalism and that was explicitly designed to signal Bangladesh's openness to private investment and market economics.

The fifteenth amendment of 2011 restored the original four principles, including socialism, but in a context in which Bangladesh had already become deeply integrated into the global market economy, with a large and growing export-oriented garment industry, significant foreign direct investment, and a commitment to market-based economic development strategies endorsed by international financial institutions.

Islam's treatment of socialism as a constitutional principle reflects this complex history. He is careful to note that socialism as a constitutional value in the Bangladesh context does not necessarily entail a specific economic system but rather a commitment to certain distributive

principles: that the economy should serve the welfare of the people as a whole, that extreme concentrations of wealth are constitutionally problematic, that the state has a responsibility to ensure that all citizens have access to basic goods and services, and that economic development policies should be evaluated not only in terms of aggregate growth but in terms of their distributive consequences.

This understanding of constitutional socialism as a distributive principle rather than as an endorsement of any particular economic system is consistent with the jurisprudential approach that the Indian Supreme Court has taken to the directive principles of state policy in the Indian Constitution, which include a commitment to securing "adequate means of livelihood" for all citizens and to preventing "concentration of wealth and means of production to the common detriment." The Indian courts have developed an approach to these directive principles that treats them not as justiciable rights but as principles that must guide the interpretation of fundamental rights and the evaluation of legislation.

6.4 Democracy and the Westminster Model

The principle of democracy as a foundational constitutional value raises fundamental questions about the nature and institutional design of democratic government. Bangladesh's 1972 Constitution established a Westminster-style parliamentary democracy, drawing on the British constitutional tradition and on the Indian constitutional model that had been established in 1950. The key features of this model include the direct election of a unicameral legislature (the Jatiya Sangsad), the formation of the government from the parliamentary majority, the accountability of the executive to the legislature through the mechanisms of parliamentary question time, votes of confidence, and parliamentary scrutiny, and the role of the President as a constitutional head of state with limited executive powers acting on the advice of the Prime Minister.

Islam's analysis of the democratic principle in Bangladesh's constitutional framework is one of the most practically important parts of his constitutional scholarship, because it addresses the structural questions that have been most consequential for Bangladesh's democratic development, or lack thereof.

A central concern of Islam's analysis is what he identifies as the problem of parliamentary sovereignty and its limits. The Westminster model, in its British form, operates under the doctrine of parliamentary sovereignty, which holds that Parliament can make or unmake any law, that no court can declare a parliamentary act void, and that no Parliament can bind its successors. But this doctrine of parliamentary sovereignty is fundamentally incompatible with written constitutional government, because the whole point of a written constitution is to bind future parliaments and to place certain matters beyond the reach of ordinary legislative action.

Bangladesh, in adopting a written constitution with an explicit provision for constitutional supremacy and with a bill of rights enforceable by the courts, chose a system that is fundamentally at odds with the strict doctrine of parliamentary sovereignty. The tension between parliamentary supremacy and constitutional supremacy is therefore a structural feature of Bangladesh's constitutional order, and it is a tension that Islam addresses with considerable sophistication.

The problem is particularly acute in the context of Article 70 of Bangladesh's constitution, which prohibits members of Parliament from voting against their own party in the legislature. Article 70 provides that a member of Parliament shall vacate his seat if he "resigns from that party" or if he "votes in Parliament against that party or abstains from voting in Parliament in defiance of that party." This provision, which was designed to prevent floor-crossing and political instability, has the effect of concentrating enormous power in the hands of party leaders, particularly the Prime Minister who leads the parliamentary majority. If MPs cannot vote against the party line, then the legislature cannot in practice hold the executive accountable through the mechanisms of parliamentary scrutiny and voted confidence, which are supposed to be the defining features of parliamentary government.

Islam's analysis of Article 70 is one of the most insightful and critical passages in his constitutional law book. He recognizes that the provision was motivated by the genuine concern for political stability that had characterized the constitutional drafters' thinking in the aftermath of the turbulent years leading to and including the Liberation War. But he also recognizes that the provision has the paradoxical effect of undermining the very parliamentary democracy it was designed to protect, by eliminating the most important mechanism through which legislators can exercise independent judgment and hold the executive accountable.

The constitutional reform proposals of 2024-2025, which recommend freeing MPs to vote independently on any issue except money bills and confidence votes, can be read as a direct response to the problem that Islam identified in his constitutional scholarship. The reformers are attempting to restore the genuine parliamentary character of Bangladesh's democratic system by reducing the degree to which the executive controls the legislature through party discipline enforced by the threat of parliamentary disqualification.

6.5 Secularism and the State-Religion Question

The principle of secularism as a foundational constitutional value has been the most contested of the four original constitutional principles, and its history in Bangladesh's constitutional order is a story of political controversy, constitutional amendment, and ongoing judicial debate that reaches into the present day.

The 1972 Constitution's commitment to secularism was understood by its framers as a rejection of the theocratic character of the Pakistani state, which had used religion (Islam) as a basis for discriminating against non-Muslim minorities and as a tool of political mobilization by the military establishment. The Bengali nationalist movement had been broadly secular in character, emphasizing Bengali cultural and linguistic identity rather than religious identity, and the inclusion of secularism as a foundational principle was intended to signal that independent Bangladesh would be a state for all its citizens regardless of religion.

The fifth amendment of 1979 replaced secularism with "absolute trust and faith in the Almighty Allah," and the eighth amendment of 1988 declared Islam the state religion of Bangladesh, a change that was deeply controversial and that generated a constitutional challenge that took decades to resolve. The fifteenth amendment of 2011 restored secularism as a constitutional

principle while simultaneously retaining the declaration of Islam as the state religion, a logical tension that Islam addresses in his constitutional law book with characteristic precision.

The question of how a state can be simultaneously secular and have an official state religion is not unique to Bangladesh; it arises in a number of constitutional systems, including those of the United Kingdom (where the Church of England is the established church), Norway (where the Lutheran Church is the official church of the state), and various other countries. But the tension is particularly acute in the Bangladesh context, given the history of religious conflict and minority rights violations that surrounds the constitutional debates about secularism and state religion.

Islam's analysis of this tension draws on comparative constitutional jurisprudence from India, particularly the Indian Supreme Court's interpretation of secularism as a constitutional value in the Indian context. The Indian Supreme Court has developed a doctrine of positive secularism, sometimes described as "sarva dharma samabhava" (equal respect for all religions), which distinguishes India's constitutional secularism from the more negative Western conception of secularism as the exclusion of religion from public life. India's constitutional secularism does not require the state to be hostile to or ignorant of religion; it requires the state to treat all religions equally and to protect the religious freedom of all citizens.

Islam argues for a similar understanding of secularism in the Bangladesh constitutional context: not as the exclusion of religion from public life, which would be both politically impractical and potentially hostile to the deep religious convictions of the majority of Bangladesh's citizens, but as the guarantee of equal treatment for all religions and of religious freedom for all citizens regardless of their faith or lack of faith.

CHAPTER SEVEN: FUNDAMENTAL RIGHTS: THEORY, DOCTRINE, AND CONTESTED BOUNDARIES

7.1 The Philosophical Foundation of Fundamental Rights

Fundamental rights, as a constitutional category, rest on a philosophical foundation that it is worth examining carefully before proceeding to the doctrinal analysis. The concept of rights, in its modern constitutional form, is closely connected to the Enlightenment tradition of natural rights theory, which held that individuals possess certain rights by virtue of their nature as rational, autonomous beings, rights that exist prior to and independently of any political authority and that political authority must respect.

The classical natural rights tradition, associated with thinkers like John Locke and Jean-Jacques Rousseau, grounded fundamental rights in a theory of natural law: the rights of liberty, property, and life were natural rights because they were necessary conditions for the exercise of human rationality and autonomy, and no legitimate government could violate them. The social contract, through which individuals consented to form political society, presupposed the retention of these natural rights; governments that violated them forfeited their claim to legitimate authority.

The Kantian tradition provided a different but complementary philosophical foundation for fundamental rights, grounding them in the categorical imperative and in the principle of treating all persons as ends in themselves rather than merely as means. On this view, fundamental rights protect the conditions necessary for autonomous rational agency, the capacity for self-determination that is the defining characteristic of human beings as moral agents. Any law that treats a person merely as a means to some social or collective end, denying that person's status as an autonomous rational agent, violates the categorical imperative and is morally impermissible regardless of the social benefits it might produce.

The contemporary philosophical debate about fundamental rights has been enormously enriched by the development of more sophisticated accounts of the relationship between rights and other values. Utilitarian philosophers like Jeremy Bentham and John Stuart Mill, while skeptical of the natural rights tradition, developed accounts of moral rights grounded in the concept of utility: rights protect interests that are so important to individual well-being that they may not be sacrificed for aggregate social benefit without very strong justification. Contemporary philosophers like Joseph Raz have developed interest-based theories of rights that attempt to combine the insights of both the natural rights and utilitarian traditions.

Mahmudul Islam's treatment of fundamental rights reflects a sophisticated engagement with these philosophical traditions. He grounds his analysis of Bangladesh's fundamental rights provisions in both the constitutional text and the philosophical tradition, arguing that the rights protected by the constitution are not merely formal legal guarantees but expressions of fundamental moral commitments about human dignity, autonomy, and equality.

7.2 The Right to Equality: Formal and Substantive Dimensions

Article 27 of Bangladesh's constitution provides that "all citizens are equal before law and are entitled to equal protection of law." This provision, which closely parallels the Fourteenth Amendment's Equal Protection Clause of the American Constitution and Article 14 of the Indian Constitution, is one of the most important and most frequently litigated constitutional provisions in Bangladesh.

Islam's analysis of the equality guarantee distinguishes between formal equality and substantive equality in a way that reflects the most sophisticated contemporary constitutional thinking on this subject. Formal equality, sometimes described as equality before the law, requires that the law be applied equally to all persons, without discrimination based on irrelevant personal characteristics. Substantive equality, sometimes described as equal protection of the law, requires that the law itself treat like cases alike and different cases differently, and that laws not be used to perpetuate or reinforce unjust social hierarchies.

The distinction between formal and substantive equality is crucial because formal equality can be perfectly consistent with substantive inequality. A law that applies equally to rich and poor, to men and women, to Hindus and Muslims, may nevertheless have profoundly unequal effects if it is designed or operates in ways that systematically disadvantage members of already disadvantaged groups. The equal protection clause, on a substantive reading, prohibits not only

formally discriminatory laws but also laws that have the effect of reinforcing structural inequalities.

Islam engages with this distinction carefully in his constitutional law book, drawing on Indian constitutional jurisprudence and on the comparative experience of other common law jurisdictions to develop a nuanced account of equality in the Bangladesh constitutional context. He argues that Article 27 requires both formal and substantive equality, but that the question of how substantive equality should be implemented raises difficult questions about the appropriate role of the courts and the appropriate scope of legislative discretion in addressing social inequalities.

This tension between judicial enforcement of substantive equality and democratic deference to legislative choices about the means of achieving equality is one of the most important structural tensions in constitutional law, and it has been addressed differently in different constitutional systems. The Indian constitutional framework has resolved it largely by treating directive principles of state policy, including the principle of economic justice and equal opportunity, as enforceable guides for legislative and executive action, while leaving the specific policy choices to the democratic branches. Islam's analysis of the Bangladesh constitutional framework points toward a similar resolution.

7.3 Article 28: The Anti-Discrimination Principle

Article 28 of Bangladesh's constitution provides that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth." This provision establishes what might be called the anti-discrimination principle, the constitutional prohibition of discrimination on the basis of specific, historically significant characteristics that have been used to subordinate and exclude members of particular social groups.

The list of protected characteristics in Article 28, religion, race, caste, sex, and place of birth, reflects the specific social realities and historical experiences that shaped Bangladesh's constitutional drafters. Religion had been the basis for the discrimination that motivated the partition of India in 1947 and the creation of Pakistan, a partition that the Bengali liberation movement had in some respects rejected. Race had been the basis for colonial oppression. Caste had been, and to a significant degree continued to be, the basis for profound social inequality in the subcontinent. Sex had been, and continued to be, the basis for systematic discrimination against women. And place of birth, including both regional and national origin, had been a basis for discrimination in the context of the tensions between East and West Pakistan.

Islam's analysis of Article 28 addresses both its substantive content and its interpretive challenges. A central interpretive question is what is meant by discrimination "on grounds only of" one of the listed characteristics. The word "only" suggests that discrimination on a listed ground is impermissible only if it is based exclusively on that ground, without any legitimate justification. But this interpretation would render the anti-discrimination principle almost meaningless, since virtually any discriminatory measure can be justified by the government with reference to some ostensibly legitimate policy objective.

Islam argues, drawing on Indian and other comparative constitutional jurisprudence, that the "only" qualification must be interpreted narrowly, so that the anti-discrimination principle retains genuine constitutional force. A measure that is based primarily or substantially on a listed ground of discrimination is impermissible even if the government can point to some other justification for it. The burden must be on the government to demonstrate that any measure that has a discriminatory impact on a protected group is based on a legitimate and substantial justification that is not itself connected to the impermissible ground of discrimination.

This analysis has particular importance in the context of gender equality, where Bangladesh's constitution has historically been subject to significant tension between the constitutional guarantee of non-discrimination on grounds of sex and the persistence of laws and practices that subordinate women in family, property, and inheritance matters.

7.4 The Right to Life and Personal Liberty: Article 32 and Beyond

Article 32 of Bangladesh's constitution provides that "no person shall be deprived of life or personal liberty save in accordance with law." This provision, which echoes the due process clauses of the American Constitution and the procedural justice requirements of other common law constitutional systems, is one of the most fundamental provisions in Bangladesh's bill of rights.

The scope and meaning of the right to life and personal liberty under Article 32 has been the subject of extensive constitutional litigation and jurisprudential development in Bangladesh. Two fundamental interpretive questions arise: What is protected by the right to life? And what does it mean to be deprived of life or liberty "in accordance with law"?

On the first question, Islam draws on the Indian Supreme Court's expansive interpretation of the right to life under Article 21 of the Indian Constitution, which has been interpreted to protect not only the bare physical fact of life but also the quality of life, including the right to livelihood, the right to health, the right to education, and the right to a dignified existence. The Indian Supreme Court's approach to Article 21 has transformed it from a narrow procedural protection against arbitrary deprivation of physical liberty into a broad substantive guarantee of human dignity and the conditions necessary for a decent human life.

Islam argues for a similarly expansive interpretation of Article 32 in the Bangladesh context, recognizing that a right to life that protects only the bare fact of physical existence provides very limited protection against the more pervasive forms of governmental action that threaten human dignity and well-being. The right to life, on this interpretation, is a right to a life worth living, which requires the protection of the physical, social, economic, and cultural conditions that make genuine human flourishing possible.

On the second question, the meaning of "in accordance with law," Islam engages with one of the most important debates in twentieth-century constitutional theory: the debate between procedure and substance in the interpretation of due process requirements.

The narrow, procedural interpretation holds that "in accordance with law" means only that the government must follow the procedures prescribed by law when depriving someone of life or liberty. As long as the government follows the required procedures, including giving proper notice, holding a proper hearing, and applying the relevant legal standards, the constitutional requirement is satisfied, regardless of the substantive justice of the underlying law.

The broader, substantive interpretation holds that "in accordance with law" requires not only procedural compliance but also that the law itself be reasonable and just. An unreasonable or unjust law, even if applied through proper procedures, violates the constitutional requirement of due process.

The Indian Supreme Court's famous decision in *Maneka Gandhi v. Union of India* (1978) rejected the narrow procedural interpretation in favor of a broader substantive approach. The court held that the right to life and personal liberty under Article 21 of the Indian Constitution required not only procedural compliance but also that any law restricting life or liberty must be "fair, just and reasonable," a standard that invited the court to scrutinize the substantive justice of legislation and executive action.

Islam's analysis draws on *Maneka Gandhi* to argue for a similar approach in Bangladesh, a move that is not without controversy given the different textual context. Bangladesh's constitution, in its Article 32, uses the phrase "in accordance with law" rather than the phrase "according to procedure established by law" used in the Indian constitution before *Maneka Gandhi*. Some commentators have argued that this textual difference supports the substantive interpretation from the outset, without the need for the kind of creative judicial interpretation that *Maneka Gandhi* represented. Others have argued that both phrases should be understood in their procedural sense, and that the expansion of due process to encompass substantive review represents an unjustified expansion of judicial power.

Islam takes a characteristically careful position: he endorses the substantive interpretation of "in accordance with law" but insists that substantive judicial review of legislation under Article 32 must be exercised with appropriate restraint, in light of the democratic character of the legislative process and the institutional limitations of the judiciary.

7.5 Freedom of Expression and Its Limits: Article 39

Article 39 of Bangladesh's constitution guarantees "freedom of thought and conscience" and "freedom of speech and expression" subject to "reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

Freedom of expression is, in the view of most constitutional theorists, one of the most important fundamental rights, not merely because it protects individual autonomy and the right to self-expression, but because it performs an essential political function in a democratic society. As the American Supreme Court Justice Louis Brandeis put it in his celebrated concurrence in *Whitney v. California* (1927), "if there be time to expose through discussion the falsehood and fallacies, to

avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

The philosophical foundations of freedom of expression have been analyzed through several distinct theoretical frameworks. The marketplace of ideas theory, associated with John Stuart Mill and Oliver Wendell Holmes, holds that truth emerges from free and open competition among ideas, and that censorship is impermissible because it interferes with this epistemic process. The autonomy theory, associated with Dworkin and others, holds that freedom of expression is essential to individual autonomy and self-development, and that suppressing speech violates the fundamental respect owed to persons as autonomous rational agents. The democratic self-governance theory holds that freedom of political speech is specially protected because it is essential to the functioning of democratic government, which requires that citizens be able to express their political views, criticize their government, and participate in public debate.

Islam's analysis of Article 39 draws on all three of these theoretical frameworks, while also engaging carefully with the limitation clause and its application in the Bangladesh constitutional context. He argues that the "reasonable restrictions" on free expression permitted by Article 39 must be genuinely reasonable, meaning that they must be proportionate to the legitimate governmental interests they serve and must not go beyond what is necessary to protect those interests.

The specific grounds for restriction listed in Article 39, security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation, and incitement, raise interesting questions about the scope and limits of permissible restriction. Islam analyzes each ground carefully, drawing on comparative constitutional jurisprudence to identify the standards that should govern their application.

The security of the state and public order grounds have been particularly controversial in Bangladesh's history, because they have been used by successive governments to restrict political speech and criticism under the guise of national security and public order concerns. Islam's analysis emphasizes that these grounds for restriction must be applied narrowly and must be grounded in genuine security or order concerns, not in the government's desire to protect itself from political criticism.

The recent constitutional reform debates of 2024-2026 have placed freedom of expression, and particularly freedom of digital expression, at the center of constitutional attention. The outgoing Awami League government's use of the Digital Security Act and its predecessor, the Information and Communication Technology Act, to prosecute journalists, bloggers, activists, and ordinary citizens for online speech that the government deemed offensive or harmful, was one of the most criticized features of the Hasina administration, and it has generated strong demands for constitutional and legislative reform to strengthen the constitutional protection of free expression.

CHAPTER EIGHT: THE STRUCTURE OF GOVERNMENT: PARLIAMENT, EXECUTIVE, AND THE CONSTITUTIONAL ARCHITECTURE

8.1 The Parliamentary System and Its Theoretical Foundations

The parliamentary system of government adopted by Bangladesh's 1972 Constitution rests on a particular theory of democratic accountability that is distinct from, and in some respects superior to, the presidential system. The key theoretical insight of the parliamentary system is the fusion of executive and legislative power: the government (the executive) is formed from the legislature and remains accountable to the legislature throughout its term. This fusion creates a mechanism of ongoing democratic accountability that the presidential system, with its separation between executive and legislative powers, does not provide in the same direct way.

The philosophical foundations of the parliamentary system are closely connected to the principle of responsible government, developed in the constitutional theory of nineteenth-century Britain. Responsible government means government that is responsible to an elected legislature, that must maintain the confidence of the majority of that legislature to remain in power, and that can be dismissed by the legislature if it loses that confidence. This principle was the great constitutional innovation of nineteenth-century British political development, and it distinguished the British constitutional monarchy from the continental European systems of absolute or limited monarchy.

Bangladesh's adoption of the parliamentary system in its 1972 Constitution reflected both the constitutional heritage from the British period and a deliberate choice to ensure ongoing executive accountability to the democratically elected legislature. This was a particularly important choice in the Bangladesh context, given the history of executive domination under the Pakistan military governments and the recognition that any democratic constitution in Bangladesh would need robust mechanisms for holding the executive accountable.

Islam's analysis of the parliamentary system in Bangladesh's constitutional framework is one of the most comprehensive and analytically sophisticated parts of his constitutional law book. He examines in detail the constitutional provisions governing the formation of the government, the relationship between the Prime Minister and the Cabinet, the relationship between the executive and the legislature, the role of the President, and the mechanisms for parliamentary accountability of the executive.

8.2 The Prime Minister and Cabinet: Constitutional Position and Powers

Under Bangladesh's parliamentary constitution, the Prime Minister is the head of government, the leading figure of the executive branch, and the most powerful political official in the state. The constitutional provisions governing the Prime Minister and Cabinet (Articles 55-58) establish a collective executive structure in which the Cabinet is collectively responsible to the Jatiya Sangsad, and in which the Prime Minister is responsible for the conduct of government and for the advice tendered to the President.

Islam's analysis of the constitutional position of the Prime Minister begins with the observation that the constitution gives relatively sparse guidance on the specific powers and functions of the Prime Minister, relying instead on constitutional convention to fill in the details. This reliance on convention is characteristic of Westminster-style parliamentary systems, which have historically developed through the gradual accretion of constitutional practices rather than through the explicit constitutional specification of governmental powers.

The dependence on constitutional convention creates both flexibility and uncertainty. The flexibility is valuable: it allows the constitutional framework to adapt to changing political circumstances without requiring formal constitutional amendment. The uncertainty is problematic: when conventions are unclear or contested, when political actors have incentives to push the boundaries of acceptable constitutional behavior, and when the institutional mechanisms for enforcing constitutional conventions are weak, the reliance on convention can become a source of constitutional instability.

Islam argues that Bangladesh's constitutional experience demonstrates the dangers of excessive reliance on constitutional convention in a political environment that is characterized by intense partisan conflict, weak constitutional culture, and insufficient institutional mechanisms for enforcing constitutional norms. The solution he advocates is not to abandon the parliamentary system, which he regards as fundamentally sound, but to strengthen the constitutional specification of governmental powers and to develop more robust institutional mechanisms for enforcing constitutional accountability.

8.3 The President: Constitutional Head of State or Political Actor?

One of the most important and most contested questions in Bangladesh's constitutional law is the constitutional position of the President. The constitution establishes Bangladesh as a republic with a parliamentary system of government, in which the President is the constitutional head of state but the Prime Minister is the head of government. In theory, the President's role is largely ceremonial, with the President acting on the advice of the Prime Minister in virtually all matters.

But the practical reality of the President's constitutional position has been considerably more complex and, at certain moments, considerably more politically significant. The constitution gives the President certain reserve powers, powers that can potentially be exercised without or against the advice of the Prime Minister, and the question of when and how these reserve powers may be exercised has been a source of persistent constitutional controversy.

Islam's analysis of the President's constitutional position is one of the most nuanced and practically important parts of his constitutional law book. He distinguishes between the President's formal constitutional powers, which include the appointment of the Prime Minister, the summoning and prorogation of Parliament, the granting of assent to legislation, and the appointment of various constitutional officers, and the President's actual discretionary powers, which are much more limited.

The most important discretionary power of the President is the power to appoint the Prime Minister. Article 56 of the constitution provides that the President shall appoint as Prime

Minister the member of Parliament who commands the support of the majority of the members of Parliament. In the normal case, this is not a genuinely discretionary decision: if one party has a clear parliamentary majority, the leader of that party is the obvious and constitutionally required appointment. But in cases of a hung parliament, where no single party commands a clear majority, the President's discretion in deciding whom to appoint as Prime Minister becomes genuinely significant, and the exercise of that discretion can have profound political consequences.

Islam analyzes this question carefully, drawing on comparative constitutional experience from India, the United Kingdom, and other parliamentary systems to identify the principles that should guide the President's discretion in such cases. He argues that the President's discretion must be exercised in accordance with constitutional principles, not political preferences: the President should appoint as Prime Minister the person who, in the President's genuine assessment, is most likely to be able to form a stable government commanding majority parliamentary support, regardless of the President's personal political sympathies.

The constitutional reform proposals of 2024-2025, which recommend expanding the President's independent powers to include the appointment of certain independent constitutional officers, represent a significant departure from the traditional Westminster model in which the President acts almost entirely on the advice of the Prime Minister. This proposal reflects the reformers' concern that the complete dependence of independent constitutional bodies, including the Human Rights Commission, the Information Commission, and others, on Prime Ministerial appointment has compromised their independence and undermined their effectiveness.

8.4 The Jatiya Sangsad: Composition, Powers, and Institutional Realities

The Jatiya Sangsad, the national parliament of Bangladesh, is the supreme legislative body of the state and the central institutional mechanism of democratic accountability under Bangladesh's parliamentary constitutional system. The constitution provides that the Sangsad shall consist of 300 directly elected members plus 50 reserved seats for women, for a total of 350 members.

Islam's analysis of the Jatiya Sangsad examines both its constitutional powers and its institutional realities. The constitutional powers of the Sangsad are broad: it has the power to make laws on all subjects within the legislative jurisdiction of the state, to approve the national budget, to hold the executive accountable through question time and other parliamentary mechanisms, to amend the constitution (subject to the supermajority requirement and the basic structure doctrine), and to remove the government by passing a vote of no confidence.

The institutional realities, however, have often been quite different from the constitutional ideal. The Jatiya Sangsad has historically been characterized by weak legislative independence from the executive, poor attendance and participation in parliamentary proceedings, limited capacity for genuine legislative scrutiny of government bills, and strong party discipline that has often reduced the Sangsad to a rubber stamp for executive decisions.

Islam is refreshingly candid about these institutional realities, while also careful to distinguish between those that are attributable to the constitutional design and those that are attributable to

political culture and institutional capacity. The most significant constitutional design issue, in his analysis, is Article 70, which as discussed above prohibits members from voting against their party in the Sangsad. But there are also institutional capacity issues, including the limited resources available to members of Parliament for legislative research and analysis, the inadequacy of parliamentary committee procedures, and the dominance of plenary proceedings over committee-level scrutiny.

Islam argues that strengthening Bangladesh's parliamentary democracy requires both constitutional reform, particularly the revision or repeal of Article 70, and institutional reform, including the development of strong parliamentary committees with adequate staff and resources, the improvement of parliamentary rules and procedures, and the cultivation of a stronger culture of legislative independence and parliamentary scrutiny.

8.5 Article 70: The Anti-Defection Provision and Its Constitutional Consequences

Article 70 of Bangladesh's constitution is, as mentioned above, one of the most significant and most controversial provisions in the constitutional framework governing the relationship between the legislature and executive. It provides that a member of Parliament shall vacate his seat if he resigns from or votes against or abstains from voting against the directions of his party.

The justification for Article 70 was the experience of political instability caused by floor-crossing and political defection in Pakistan's parliamentary history, particularly in the years before the Liberation War, when political alignments in the Pakistani National Assembly shifted with bewildering speed as individual politicians changed parties or formed new alliances in pursuit of personal advantage. The constitutional drafters of 1972 were determined to prevent this kind of political instability in the new Bangladesh, and they included Article 70 as an anti-defection mechanism.

The constitutional consequences of Article 70, however, have been significantly more far-reaching than the drafters intended or anticipated. By making members of Parliament effectively unable to vote against the party line without losing their seats, Article 70 has:

First, eliminated the possibility of genuine parliamentary accountability of the executive. If government MPs cannot vote against the government, they cannot hold the government accountable through the threat of legislative defeat, which is the fundamental mechanism of parliamentary accountability in the Westminster system.

Second, concentrated enormous power in the hands of party leaders, particularly the Prime Minister. Since government MPs must vote as directed by the party leadership or lose their seats, the Prime Minister effectively commands a compliant parliamentary majority on every vote, regardless of individual members' views.

Third, eliminated the possibility of the formation of coalition governments based on parliamentary bargaining, since there is no incentive for individual MPs to defect from their parties to support an alternative government if they lose their seats in doing so.

Fourth, reduced the Jatiya Sangsad from a genuine legislative body in which laws are made through deliberation and debate to a ratifying body in which the executive's legislative agenda is formally approved.

Islam's analysis of these consequences is thorough and penetrating. He argues that Article 70, whatever its historical justification, has become a structural obstacle to the development of genuine parliamentary democracy in Bangladesh, and that its revision or repeal is essential to the constitutional reform agenda.

The July Charter of 2025, as noted above, proposes significant changes to the Article 70 regime, freeing MPs to vote independently on all matters except money bills and votes of confidence. This represents a direct response to the constitutional analysis that Islam and others had developed in their scholarship, and it suggests that the constitutional reform process is, in this respect at least, taking seriously the jurisprudential critique of Bangladesh's existing constitutional framework.

CHAPTER NINE: THE JUDICIARY AND JUDICIAL REVIEW: THE GUARDIAN OF THE CONSTITUTION

9.1 The Role of Judicial Review in Constitutional Theory

Judicial review, the power of courts to declare legislative or executive acts unconstitutional and void, is one of the most distinctive and most controversial features of constitutional government. It is distinctive because it gives unelected judges the power to override the decisions of elected legislatures, a power that sits in obvious tension with the democratic principle that political decisions should be made by those who are accountable to the people through elections. It is controversial because different constitutional theorists have very different views about whether this counter-majoritarian power is legitimate, and if so, within what limits.

The theoretical justifications for judicial review are numerous and sophisticated. The most basic justification is logical: if the constitution is the supreme law, and if it is the function of courts to apply the law, then courts must apply the constitution even when it conflicts with ordinary legislation, which means courts must declare inconsistent legislation invalid. This argument, articulated by Chief Justice John Marshall in the famous American case of *Marbury v. Madison* (1803), is compelling as far as it goes, but it does not tell us who should have the last word on what the constitution means, and there is no logically necessary reason why unelected courts should have that power rather than elected legislatures.

More sophisticated justifications for judicial review include: the structural argument that an independent judiciary is needed to enforce the separation of powers by preventing any one branch of government from exceeding its constitutional authority; the rights-protection argument that courts are better placed than legislatures to protect minority rights and individual freedoms because they are insulated from majoritarian political pressures; the epistemic argument that courts, through the discipline of reasoned decision-making and the adversarial process, are better

able to identify the correct interpretation of constitutional provisions than legislatures operating under political pressures; and the constitutional democracy argument that judicial review is an essential part of the constitutional design of a democracy, one of the mechanisms through which the constitution prevents the transformation of democracy into majoritarian tyranny.

Islam engages with these theoretical arguments in his constitutional law book with characteristic sophistication. He is clearly a strong supporter of judicial review as an essential component of constitutional government in Bangladesh, given the country's history of legislative abuse of constitutional provisions and executive manipulation of the constitutional order. But he is also aware of the institutional limitations of the judiciary and the need for judicial self-restraint in the exercise of the power of constitutional review.

9.2 The Supreme Court and Its Dual Structure

Bangladesh's Supreme Court, established by Part VI of the constitution, has a distinctive dual structure: it consists of two divisions, the High Court Division and the Appellate Division, each with its own jurisdiction and function.

The High Court Division has original jurisdiction to enforce fundamental rights, through the power to issue directions, orders, and writs, including the constitutional writs of habeas corpus, mandamus, certiorari, prohibition, and quo warranto. This original jurisdiction of the High Court Division to protect fundamental rights is one of the most important constitutional provisions in Bangladesh's bill of rights, because it provides the institutional mechanism through which constitutional rights guarantees can be made effective against governmental action. Without an accessible court with power to enforce those rights, the guarantee of fundamental rights would be merely nominal.

The Appellate Division has jurisdiction to hear appeals from any judgment, decree, order, or sentence of the High Court Division, and also has original jurisdiction in certain matters specified in the constitution. The Appellate Division is the final court of appeal in Bangladesh's judicial hierarchy, and its decisions on constitutional questions are authoritative and binding on all other courts.

Islam's analysis of the Supreme Court's dual structure is detailed and technically sophisticated. He examines the specific provisions governing the jurisdiction of each division, the procedures for invoking that jurisdiction, the nature and scope of the reliefs available, and the relationship between the original constitutional jurisdiction of the High Court Division and the appellate jurisdiction of the Appellate Division.

One of the most practically important questions he addresses is the scope of the High Court Division's writ jurisdiction. The constitution authorizes the High Court Division to issue directions or orders as may be appropriate for the enforcement of any of the fundamental rights conferred by the constitution. This provision raises the question of what counts as "appropriate" enforcement of fundamental rights, and in particular whether the High Court Division can issue what have come to be called "public interest litigation" orders, requiring positive governmental action to give effect to constitutional rights.

Islam's analysis of public interest litigation in Bangladesh is particularly significant in light of the development of this concept in the Indian Supreme Court, which from the early 1980s onward developed an expansive jurisprudence of social action litigation that allowed the court to intervene in matters of public importance even when the traditional requirements of standing, such as the existence of a direct personal interest in the matter, were not met. The Indian Supreme Court's public interest litigation jurisprudence transformed the court from a traditional dispute-resolution institution into something more like an ombudsman for constitutional governance, empowered to intervene across a wide range of governmental activities in the name of constitutional rights protection.

9.3 Judicial Independence: Constitutional Protection and Practical Realities

The independence of the judiciary from executive and legislative control is a fundamental requirement of the rule of law and of the effective protection of constitutional rights. A judiciary that is dependent on the executive or legislature cannot function as an effective check on governmental power, because it will be subject to the same political pressures that distort executive and legislative decision-making.

Bangladesh's constitution includes several provisions designed to protect the independence of the judiciary. Judges of the Supreme Court are appointed by the President (in the Appellate Division's case, after consultation with the Chief Justice), and can be removed only through the process of impeachment by a two-thirds majority of Parliament on grounds of "proved incapacity or misconduct." The salaries and service conditions of judges are charged on the Consolidated Fund and cannot be varied to their disadvantage after appointment.

Islam's analysis of judicial independence in Bangladesh identifies both the constitutional provisions designed to protect independence and the practical threats to independence that have characterized Bangladesh's judicial history. The most significant practical threat to judicial independence has been the system of executive control over the subordinate judiciary, the courts below the Supreme Court level, which has allowed governments to influence the administration of justice at the level where most ordinary Bangladeshis encounter the courts.

The constitution, in Article 116, originally vested the superintendence and control of the subordinate courts in the Supreme Court. But the fourth amendment of 1975 transferred this control to the executive, a change that significantly compromised the independence of the subordinate judiciary. The fifteenth amendment of 2011 partially restored the Supreme Court's superintendence over the subordinate courts, but the full separation of the judiciary from executive control remains an unfinished project of constitutional reform.

The recent constitutional reform proposals of 2024-2025 give considerable attention to the independence of the judiciary, proposing stronger constitutional protections for judicial independence at all levels, clearer procedures for judicial appointment and removal, and enhanced mechanisms for ensuring that the courts can function free from political interference.

9.4 The Emergency Provisions: Constitutional Suspension and Its Limits

Part IX-A of Bangladesh's constitution, dealing with emergency provisions, gives the government extraordinary powers to suspend constitutional rights in the event of a grave emergency threatening the state or its economy. Article 141A empowers the President to proclaim a state of emergency if "a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance." During a state of emergency, the enforcement of various fundamental rights may be suspended.

Islam's analysis of the emergency provisions is one of the most important and technically difficult parts of his constitutional law book. The power to suspend fundamental rights during an emergency is an inherently dangerous constitutional provision, because it creates a mechanism through which governments can, in the name of emergency, effectively suspend the constitutional order. Bangladesh's history, as Islam was acutely aware, provides vivid examples of the abuse of emergency powers for political purposes.

Islam argues for a strict interpretation of the conditions that must be met before emergency powers can be lawfully invoked, for robust judicial review of emergency declarations and the measures taken under them, and for strong procedural safeguards including parliamentary approval and oversight of emergency declarations and their continuation. He also argues that even during states of emergency, certain fundamental rights, particularly the right not to be tortured, the right to equality before the law, and certain minimum procedural rights, cannot lawfully be suspended.

This analysis of the limits of emergency powers reflects one of the most important recent developments in constitutional theory: the concept of human rights that are non-derogable even in emergencies. Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR), to which Bangladesh is a party, specifies certain rights that cannot be suspended even in a public emergency, including the right to life, the prohibition of torture and cruel treatment, the prohibition of slavery, and the prohibition of retrospective criminal punishment. Islam's analysis draws on this international human rights framework to reinforce his argument that Bangladesh's constitutional emergency powers have both explicit and implicit limits that the courts can and must enforce.

CHAPTER TEN: CONSTITUTIONAL AMENDMENT: THE THEORY AND PRACTICE OF CONSTITUTIONAL CHANGE

10.1 The Theory of Constitutional Amendment

The procedure for amending a constitution is one of the most important and most revealing features of any constitutional system. It tells us about the constitutional framers' assumptions regarding the relationship between the constitution and ordinary democratic politics, about the degree of constitutional entrenchment they considered appropriate, and about the balance they sought to strike between constitutional rigidity (which protects against majoritarian manipulation

of the constitutional order) and constitutional flexibility (which allows the constitution to adapt to changing circumstances and values).

Constitutions exist on a spectrum from relatively rigid to relatively flexible. At one extreme, the British "constitution" (which is not codified) is maximally flexible: any Parliament can change any constitutional rule by ordinary legislation, subject only to political constraints. At the other extreme, some constitutional provisions in Germany are "eternity clauses" (Ewigkeitsklauseln) under Article 79(3) of the Basic Law, which explicitly places them beyond the reach of any constitutional amendment: no amendment may affect the federal structure of the state, the principle of human dignity, or the fundamental democratic order.

Bangladesh's constitution occupies a middle position on this spectrum. The general amendment procedure, set out in Article 142, requires a bill to be supported by "not less than two-thirds of the total number of members of Parliament." This supermajority requirement is designed to ensure that constitutional amendments represent a broad political consensus rather than merely the preference of the current parliamentary majority. However, some provisions of the constitution, as discussed above in connection with the basic structure doctrine, may be beyond the reach of any parliamentary amendment.

Islam's analysis of the constitutional amendment procedure is thorough and analytically precise. He examines the historical background of Article 142, the procedural requirements for its exercise, the relationship between the amendment power and the basic structure doctrine, and the political realities of constitutional amendment in Bangladesh.

10.2 The History of Constitutional Amendments: A Cautionary Tale

The seventeen constitutional amendments that Bangladesh's constitution had undergone as of 2018 provide a vivid illustration of both the uses and the abuses of the constitutional amendment power. Some amendments, like the twelfth amendment restoring the parliamentary system in 1991, represented genuine constitutional restoration, undoing the damage done by martial law governments. Others, like the fourth amendment abolishing multi-party democracy in 1975, represented constitutional subversion dressed up in the formal garb of constitutional amendment.

Islam's constitutional law book traces the history of these amendments in considerable detail, assessing each amendment in terms of its constitutional validity, its political motivation, and its consequences for Bangladesh's constitutional order. His assessment is clear-eyed and historically grounded: he does not shy away from identifying amendments that were constitutionally problematic, even when they were made by governments that were formally legitimate.

The fifth amendment case, as discussed above, represented the Supreme Court's most significant engagement with the constitutional validity of past amendments, and its conclusion that the amendments ratified by the martial law government were unconstitutional and void represents a vindication of the jurisprudential framework that Islam had developed in his constitutional scholarship.

The fifteenth amendment of 2011, which was the most significant constitutional change since the restoration of democracy in 1991, is analyzed by Islam in the third edition of his constitutional law book with characteristic care. The fifteenth amendment made numerous changes to the constitutional text, some of them restorative (reinstating the four original fundamental principles), some of them innovative (introducing provisions for the recognition of the liberation war and for the designation of Sheikh Mujibur Rahman as the Father of the Nation), and some of them controversial (abolishing the caretaker government system). Islam's analysis of these changes is one of the most balanced and comprehensive treatments available.

The abolition of the caretaker government system by the fifteenth amendment was particularly controversial, and Islam's treatment of this change in the third edition of his book reflects the gravity with which he viewed it. The caretaker government system had been introduced in 1996 specifically to address the problem of partisan manipulation of elections by governments in power, and its abolition created the conditions for the electoral crises of 2014 and 2018, in which the general elections were widely criticized as neither free nor fair.

10.3 The Unconstitutional Constitutional Amendment: Bangladesh's Contribution to Global Doctrine

The concept of an "unconstitutional constitutional amendment," which sounds paradoxical but is increasingly recognized in global constitutional jurisprudence, refers to a formal constitutional amendment that is itself unconstitutional because it violates the basic structure or essential features of the constitution. This concept, developed most fully in the Indian Supreme Court's jurisprudence from *Kesavananda Bharati* onward, represents the courts' claim to have the last word on the limits of the constitutional amendment power.

Bangladesh's Supreme Court has engaged with this concept in several important cases, and Islam's constitutional law book provides a comprehensive analysis of the relevant jurisprudence. The Eighth Amendment case (*Anwar Hossain Chowdhury v. Bangladesh*, 1989), which challenged the constitutional validity of the eighth amendment's establishment of permanent seats of the High Court Division outside Dhaka, was the first major case in which Bangladesh's Supreme Court engaged with the basic structure doctrine. The majority of the court in that case held that the constitution has a basic structure that cannot be altered by any constitutional amendment, though the judges differed on the specific content of that basic structure.

The implications of this doctrine for Bangladesh's constitutional law are profound. If the courts have the power to invalidate constitutional amendments that violate the basic structure, then they have, in effect, a veto power over the exercise of the amendment power. This gives the judiciary a role in the constitutional amendment process that is not explicitly provided for by the constitutional text, and it raises important questions about the democratic legitimacy of such judicial power.

Islam addresses these questions with the sophistication they deserve, recognizing both the force of the basic structure doctrine as a protection against constitutional subversion and the genuine constitutional concerns about judicial overreach that it raises. His analysis is one of the most

balanced and intellectually serious treatments of this issue in South Asian constitutional scholarship.

CHAPTER ELEVEN: MAHMUDUL ISLAM AND THE CARETAKER GOVERNMENT CONTROVERSY

11.1 The Genesis of the Caretaker System

The caretaker government system, which was introduced into Bangladesh's constitutional framework by the thirteenth amendment of 1996, represents one of the most distinctive and innovative constitutional arrangements in South Asian political history. To understand why this arrangement was considered necessary, one must understand the specific problem it was designed to address.

In Bangladesh's parliamentary system, general elections are held under the supervision of an Election Commission, but the government remains in power during the election period. The party in power therefore has both the motive and the means to use governmental resources and administrative machinery to influence the electoral outcome in its own favor. This concern about partisan manipulation of elections was not hypothetical: the elections held in 1988 and 1991 under the Ershad government, and the elections of 1996 organized by the BNP government of Khaleda Zia, were all criticized by the opposition as being conducted under conditions that compromised their fairness and credibility.

The caretaker government concept emerged from the opposition's demand for a neutral, non-partisan administration to oversee the conduct of elections. After significant political agitation, including mass protests and a general strike, the BNP government of Khaleda Zia agreed to the introduction of the caretaker government system. The thirteenth amendment provided that within 15 days of the dissolution of Parliament, the President would appoint a non-party caretaker government headed by the Chief Adviser, who would be the most recently retired Chief Justice of the Supreme Court, and consisting of up to ten other advisers who would be "persons who are not members of any political party."

The caretaker government would hold power for a maximum of 90 days, during which it would conduct the general election and then transfer power to the newly elected government. The caretaker government would have no power to make any policy decisions except those necessary for the day-to-day affairs of government and the holding of a free and fair election.

11.2 Islam's Analysis of the Caretaker System

Mahmudul Islam's analysis of the caretaker government system in his constitutional law book is one of the most comprehensive and analytically sophisticated treatments of this distinctive constitutional arrangement. He examines the constitutional basis of the caretaker system, its relationship to the fundamental constitutional principles of democracy and parliamentary

government, the specific provisions governing its composition and powers, and the constitutional questions that it raises.

On the constitutional basis of the caretaker system, Islam argues that while the system is an innovation that departs from the traditional Westminster model in significant ways, it is consistent with the fundamental constitutional principles of democratic accountability and free and fair elections. The key argument is that the right to vote in free and fair elections is a fundamental constitutional right implicit in the democratic principle that "all powers in the Republic belong to the people." If elections are not free and fair, the people's sovereign power cannot be genuinely expressed, and the constitutional requirement of democratic government is not met. The caretaker government system is therefore a constitutional mechanism for protecting this fundamental right.

On the relationship between the caretaker system and parliamentary government, Islam recognizes a genuine tension. The caretaker government is not a parliamentary government in the traditional sense: it is not formed from the parliamentary majority, it is not accountable to Parliament (which has been dissolved), and it is not subject to the standard mechanisms of parliamentary accountability. But Islam argues that this tension is acceptable given the specific and temporary purpose of the caretaker government: it is a transitional arrangement designed to ensure the conditions for the democratic election of a new parliamentary government, and its derogation from the norms of parliamentary government is justified by this transitional purpose.

11.3 The Thirteenth Amendment Case and the Abolition of the Caretaker System

The constitutional validity of the caretaker government system was challenged before Bangladesh's Appellate Division in the case of *Khondker Delwar Hossain v. Bangladesh Italian Marble Works Ltd.*, commonly known as the Thirteenth Amendment case. The Appellate Division, in a divided decision handed down in 2011, held that the thirteenth amendment was unconstitutional because it was inconsistent with the basic structure of the constitution, specifically the principles of democracy and parliamentary government.

The court's reasoning was that a caretaker government headed by a former Chief Justice and consisting of unelected advisers who had no parliamentary mandate or accountability was fundamentally inconsistent with the democratic principle of parliamentary government, which requires that the executive be accountable to an elected legislature. Since Parliament would be dissolved during the caretaker period, the caretaker government would be neither elected nor accountable, violating the fundamental democratic character of Bangladesh's constitutional order.

The Appellate Division's decision has been the subject of intense controversy and criticism, including from Mahmudul Islam himself. Critics of the decision argue that the court failed to appreciate the specific constitutional purpose of the caretaker system, which was not to establish a permanent alternative to parliamentary government but to provide a transitional mechanism for ensuring free and fair elections. They also argue that the court's application of the basic structure doctrine to strike down a constitutional amendment that had been introduced through the formal amendment process was itself constitutionally problematic.

Islam's third edition of his constitutional law book, published after the Thirteenth Amendment case, engages with the court's reasoning with characteristic care and critical independence. While he acknowledges the force of the court's concern about democratic accountability, he argues that the majority's reasoning was too narrow and failed to give adequate weight to the constitutional importance of free and fair elections as a condition for genuine democratic government. He also expresses concern about the political consequences of abolishing the caretaker system without providing an adequate alternative mechanism for ensuring the integrity of elections.

These concerns proved prescient. The elections of 2014, held without the caretaker system and boycotted by the main opposition parties, were characterized by widespread allegations of fraud and irregularity. The elections of 2018 were similarly controversial. And the deep constitutional crisis of 2024, which culminated in the mass uprising that forced Sheikh Hasina from power, was in significant part a consequence of the electoral manipulation made possible by the abolition of the caretaker system.

CHAPTER TWELVE: THE CONSTITUTIONAL CRISIS OF 2024 AND THE REFORM AGENDA: ISLAM'S LEGACY IN CONTEMPORARY CONTEXT

12.1 The July 2024 Uprising: A Constitutional Moment

The events of July and August 2024, which began as a student protest movement against civil service recruitment quotas and rapidly escalated into a mass uprising that forced the resignation of Prime Minister Sheikh Hasina and brought down the Awami League government that had been in power since 2009, represent the most significant constitutional moment in Bangladesh's history since the Liberation War of 1971.

The uprising was not, initially, primarily a constitutional movement. It was triggered by a specific policy grievance: the reinstatement of a quota system for civil service recruitment that reserved a significant portion of government positions for descendants of freedom fighters of the 1971 Liberation War. The student protesters argued that the quota system was unfair, exclusionary, and inconsistent with the constitutional principle of equality of opportunity in public employment guaranteed by Article 29 of the constitution.

But as the protests escalated, and as the government responded with violence that resulted in the deaths of hundreds of protesters, the constitutional dimensions of the crisis became increasingly apparent. The protesters were confronting not just a specific policy but a system of governance that had become, in the view of many Bangladeshis, profoundly undemocratic: a government that had used electoral manipulation to maintain power, that had silenced dissent through the use of repressive laws, that had compromised the independence of the judiciary and other constitutional institutions, and that had concentrated power in the executive at the expense of the constitutional checks and balances that were supposed to constrain it.

The constitutional resonances of this crisis with the theoretical and analytical framework that Mahmudul Islam had developed in his constitutional law book are striking and profound. Islam

had spent decades analyzing the structural constitutional vulnerabilities of Bangladesh's constitutional order: the concentration of power in the executive, the compromised independence of the judiciary, the weakening of parliamentary accountability through Article 70, the suppression of fundamental rights through repressive legislation, and the electoral manipulation made possible by the abolition of the caretaker government system. The events of 2024 can be read as the dramatic and bloody realization of the risks that Islam had identified.

12.2 The Constitution Reform Commission: Implementing Islam's Analytical Framework

Following the ouster of the Hasina government and the formation of the interim government under Professor Muhammad Yunus, the new government established a Constitutional Reform Commission chaired by Professor Ali Riaz with a mandate to review Bangladesh's constitutional framework and to propose reforms designed to address its structural weaknesses.

The Commission's report, submitted on January 15, 2025, contains a comprehensive set of reform proposals that draw explicitly and implicitly on the constitutional analysis that Islam and others had developed over decades. The report recommends, among many other things:

The replacement of the unicameral Jatiya Sangsad with a bicameral legislature consisting of a lower house elected by direct vote and an upper house elected by proportional representation, addressing the structural problem of parliamentary accountability by creating a more representative and institutionally balanced legislative framework.

The introduction of term limits for the Prime Minister, preventing the kind of long-term consolidation of executive power that characterized the Hasina government and many of its predecessors.

The strengthening of constitutional protections for the independence of the judiciary, including clearer procedures for judicial appointment and removal and stronger institutional safeguards against executive interference.

The revision of the constitutional amendment procedure to require a two-thirds majority in the lower house and a simple majority in the upper house, plus a national referendum for fundamental constitutional changes, making it significantly more difficult for a single party with a parliamentary supermajority to manipulate the constitution for partisan purposes.

The expansion of the list of fundamental rights, including explicit constitutional recognition of rights that have previously been recognized only through judicial interpretation, such as the right to a clean environment, the right to access to information, and the rights of children, indigenous peoples, and people with disabilities.

The recognition of all mother languages of Bangladesh as state languages alongside Bengali, addressing the long-standing concern about the rights of non-Bengali indigenous communities.

The formal constitutional recognition of the rights of all citizens as "Bangladeshis" rather than "Bangalees," addressing the tension between Bengali cultural nationalism and broader civic nationalism that had been a source of political controversy throughout Bangladesh's history.

Each of these proposed reforms can be traced back to constitutional problems that Mahmudul Islam identified and analyzed in his constitutional law book, and the resonance between Islam's analytical framework and the reform agenda of the 2024-2025 Constitutional Reform Commission is one of the most striking demonstrations of the lasting influence of his constitutional scholarship.

12.3 The July Charter of 2025 and the Constitutional Referendum of 2026

The July Charter of 2025, signed by the National Consensus Commission and 24 political parties on October 17, 2025, consolidated over 80 reform proposals, nearly half of them constitutional in character, into a single political agreement that was then put to a national referendum held on February 12, 2026, alongside the parliamentary elections.

The Charter represents the most ambitious constitutional reform agenda in Bangladesh's history since the adoption of the original 1972 Constitution. Its provisions address virtually every aspect of Bangladesh's constitutional framework that Islam had identified as problematic in his constitutional law book: the concentration of executive power, the weakness of parliamentary accountability, the compromised independence of constitutional institutions, the inadequacy of fundamental rights protection, and the vulnerability of the constitutional order to manipulation through the formal amendment process.

The referendum of February 12, 2026, while taking place after the period covered by Islam's lifetime work, represents in a profound sense the culmination of the constitutional analysis and advocacy that he embodied. The question put to the Bangladeshi people in that referendum, whether to endorse a comprehensive set of constitutional reforms designed to strengthen democratic governance, protect fundamental rights, and prevent the kind of executive dominance that had characterized Bangladesh's political history, is precisely the question that Islam's constitutional scholarship had been preparing the ground for over decades.

Whether the referendum's outcome will fully realize the constitutional vision that Islam advocated is a question that can only be answered in the coming years and decades. Constitutional reform is not an event but a process, and the history of constitutional change, in Bangladesh as elsewhere, teaches that formal constitutional provisions are only as effective as the political culture, institutional capacity, and civic commitment that support them. But the fact that the question is being seriously asked and seriously debated, in the language of constitutional principle and institutional design that Islam helped to develop and popularize in Bangladesh, is itself a tribute to the enduring significance of his constitutional scholarship.

CHAPTER THIRTEEN: INTERPRETIVE METHODOLOGY: HOW MAHMUDUL ISLAM READ THE CONSTITUTION

13.1 Purposive Interpretation and Textualism

Constitutional interpretation is not a neutral technical activity. It requires a set of methodological commitments about how the constitutional text should be approached, what sources of meaning may be consulted in identifying the meaning of constitutional provisions, and how apparent ambiguities or conflicts within the constitutional text should be resolved. Different methodological commitments lead to different constitutional outcomes, and the choice among interpretive methodologies is itself a constitutional and political choice.

The major approaches to constitutional interpretation in the common law tradition include: strict textualism, which holds that the meaning of constitutional provisions is fixed by the ordinary meaning of their words and that no other sources of meaning should be consulted; original intent originalism, which holds that the meaning of constitutional provisions is determined by the specific intentions of the constitutional framers; original public meaning originalism, which holds that the meaning of constitutional provisions is fixed by the ordinary public meaning of the constitutional text at the time of its adoption; purposivism, which holds that constitutional provisions should be interpreted in light of the purposes they were designed to achieve; structuralism, which emphasizes the relationships among different constitutional provisions and the implications of the constitutional structure as a whole for the meaning of particular provisions; and living constitutionalism, which holds that constitutional provisions should be interpreted in light of contemporary values and evolving social circumstances.

Mahmudul Islam's interpretive methodology is best described as purposive constitutionalism with a strong comparative dimension. He begins with the text of constitutional provisions, analyzing their ordinary meaning and their grammatical structure. But he does not stop with the text: he invariably examines the historical background of the provision, the specific problem or purpose it was designed to address, the broader constitutional context within which it operates, and the comparative experience of other jurisdictions that have addressed similar constitutional questions.

This purposive approach is reflected throughout Islam's constitutional law book. When he analyzes Article 32's guarantee of the right to life and personal liberty, he does not merely read the words of the article; he examines the historical context of arbitrary detention and executive abuse that made this provision necessary, the purposes of liberty protection and due process that the framers sought to achieve, the relationship between Article 32 and the other fundamental rights provisions, and the ways in which similar provisions have been interpreted in Indian, British, American, and other constitutional systems.

13.2 The Role of Precedent in Constitutional Interpretation

The role of precedent in constitutional interpretation raises a distinctive set of questions that do not arise in the same way in ordinary legal adjudication. In ordinary civil and criminal cases, the doctrine of stare decisis holds that courts should follow the decisions of higher courts and should not lightly depart from their own previous decisions. This doctrine serves the important values of consistency, predictability, and respect for established law.

But constitutional adjudication raises special challenges for the doctrine of stare decisis. Constitutional decisions are, in principle, much more difficult to change than statutory decisions: if a court misinterprets a statute, Parliament can correct the interpretation by amending the statute; but if a court misinterprets the constitution, the correction of the error requires the much more demanding process of constitutional amendment. This asymmetry suggests that courts should be more willing to reconsider their constitutional decisions than their statutory decisions, since the costs of adhering to a wrong constitutional interpretation are potentially much higher.

On the other hand, if courts are too willing to reconsider constitutional decisions, they undermine the very constitutional certainty and stability that the constitution is designed to provide. If constitutional rights and constitutional powers are subject to constant reinterpretation as the composition of the court changes, the constitution loses its character as a relatively stable foundational document and becomes a more volatile and unpredictable legal landscape.

Islam navigates this dilemma with characteristic care. He acknowledges the authority of precedent in constitutional adjudication, recognizing that respect for established constitutional decisions is important for the legitimacy and authority of the judicial system. But he also recognizes that constitutional precedent is not absolutely binding in the way that ordinary legal precedent may be, and that courts retain the power to overrule earlier constitutional decisions when those decisions are clearly wrong or when changed circumstances make it impossible to adhere to them without undermining fundamental constitutional values.

This balanced approach to constitutional precedent is reflected in Islam's analysis of the evolution of constitutional doctrine on fundamental rights in Bangladesh. He traces the development of the Supreme Court's jurisprudence on various fundamental rights provisions over the years since independence, noting where the court has deepened and expanded its earlier decisions and where it has departed from or qualified them, and evaluating these developments in terms of their consistency with the constitutional purposes the relevant provisions were designed to serve.

13.3 International Human Rights Law and Constitutional Interpretation

One of the most significant developments in constitutional interpretation in the late twentieth and early twenty-first centuries has been the growing influence of international human rights law on domestic constitutional adjudication. Bangladesh is a party to a range of international human rights instruments, including the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC), and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). These instruments create international legal obligations that Bangladesh is bound to observe, and they also contain substantive norms that can inform the interpretation of domestic constitutional provisions.

Islam's constitutional law book engages with international human rights law as a source of constitutional interpretation, drawing on the norms and jurisprudence of international human rights bodies to inform his analysis of Bangladesh's fundamental rights provisions. This approach reflects a sophisticated understanding of the relationship between domestic constitutional law

and international human rights law, recognizing that the two bodies of law are mutually reinforcing: international human rights law sets a floor of rights protection that domestic constitutional law must at least meet, while domestic constitutional interpretation can in turn contribute to the development of international human rights norms.

The use of international human rights law in constitutional interpretation has been particularly significant in areas such as the rights of detainees and prisoners, the prohibition of torture and cruel treatment, the rights of women and children, and the rights of minorities and indigenous peoples. In each of these areas, international human rights instruments provide more detailed and more developed normative frameworks than Bangladesh's constitutional provisions alone, and Islam's analysis draws on these frameworks to enrich his interpretation of the domestic constitutional guarantees.

CHAPTER FOURTEEN: CONTROVERSIES AND CRITICISMS: A CRITICAL ASSESSMENT OF ISLAM'S CONSTITUTIONAL THOUGHT

14.1 The Counter-Majoritarian Difficulty

No serious engagement with Mahmudul Islam's constitutional thought would be complete without acknowledging the significant controversies and criticisms that it has attracted, both within Bangladesh's legal and scholarly community and from the perspective of comparative constitutional theory.

The most fundamental criticism of Islam's constitutional approach concerns what Alexander Bickel, the American constitutional scholar, famously called "the counter-majoritarian difficulty": the problem of justifying the power of unelected judges to override the decisions of elected legislatures in a democratic system. Islam's strong advocacy of judicial review, his endorsement of the basic structure doctrine, and his support for an expansive interpretation of fundamental rights all involve giving the judiciary a significant role in constraining democratic majorities. Critics argue that this role is difficult to justify in a system that claims to be grounded in popular sovereignty and democratic self-governance.

This criticism has particular force in the Bangladesh context, where the judiciary has not always distinguished itself by its independence, integrity, and commitment to constitutional principle. The history of judicial capitulation to executive pressure during periods of martial law and authoritarian government, and the persistent concerns about corruption and political influence in judicial appointments, suggest that the institutional capacity of the Bangladeshi judiciary to exercise the kind of principled constitutional review that Islam advocates may be more limited than his theoretical framework assumes.

Islam is not unaware of these institutional realities, and his constitutional law book contains a realistic assessment of the challenges facing Bangladesh's judiciary. But his critics argue that he does not sufficiently adjust his theoretical prescriptions to take account of these realities, that his

constitutional vision requires a judiciary of greater independence and institutional quality than Bangladesh has historically possessed or is currently likely to achieve.

14.2 The Tension Between Rights and Development

A second significant controversy in Mahmudul Islam's constitutional thought concerns the relationship between fundamental rights protection and development. Bangladesh is a developing country with significant levels of poverty, illiteracy, malnutrition, and inadequate access to healthcare and other basic services. Some critics argue that an excessive focus on civil and political rights, at the expense of economic and social rights and development objectives, is ill-suited to Bangladesh's developmental circumstances.

This criticism reflects a broader debate in constitutional theory and human rights scholarship about the priority of different categories of rights. Classical liberal constitutionalism, associated with the negative liberty tradition in political philosophy, gives priority to civil and political rights, which protect individuals from governmental interference, over economic and social rights, which require positive governmental action to provide basic goods and services. Critics of this prioritization, from within the tradition of social democracy and from within the developing world, argue that negative civil and political rights are of limited value to people who lack the material conditions for a genuinely autonomous life: freedom of speech is of little use to someone who is too hungry to concentrate, and the right to a fair trial is of little use to someone who cannot afford a lawyer.

Islam's constitutional thought attempts to navigate this tension through his analysis of the Fundamental Principles of State Policy, which include directive principles for economic and social development, and through his expansive interpretation of the right to life and personal liberty, which he argues encompasses the right to the conditions necessary for a dignified human existence. But critics argue that his framework does not adequately address the tension between rights protection and development, and that the priority given to civil and political rights in his constitutional analysis reflects the perspective of a privileged professional class rather than the needs of Bangladesh's poorest and most vulnerable citizens.

14.3 The Gender Question: Constitutional Equality and Social Reality

A third area of significant controversy concerns the relationship between the constitutional guarantee of gender equality and the social and legal realities of women's lives in Bangladesh. The constitution guarantees equality of women and men in Articles 27 and 28, and prohibits discrimination on grounds of sex. But Bangladesh's personal law systems, governing marriage, divorce, inheritance, and family matters, continue to be governed by religious laws that treat women as unequal in various respects.

Islam's treatment of this tension in his constitutional law book is careful but does not fully resolve the underlying contradiction. He acknowledges the constitutional commitment to gender equality and the ways in which religious personal laws may be inconsistent with this commitment, but he also recognizes the political and cultural sensitivities involved in any attempt to reform personal law systems through constitutional mandate. His analysis points

toward the need for legislative reform rather than judicial invalidation of existing personal law systems, but the pace and extent of legislative reform in this area has been limited, and the constitutional promise of gender equality remains significantly unrealized in the domain of family law.

The recent constitutional reform proposals of 2024-2025, which include explicit constitutional recognition of gender equality and the rights of women, represent an important step forward in this area. But the extent to which formal constitutional recognition translates into substantive change in legal doctrine and social practice will depend on the development of a strong jurisprudence of gender equality, informed by the kind of principled constitutional analysis that Islam's work provides, and supported by legislative and social reform.

14.4 The Limits of Textual Analysis: Beyond the Written Constitution

A fourth significant criticism of Islam's constitutional thought concerns its relative emphasis on the written constitutional text at the expense of the unwritten constitutional conventions and practices that also form an important part of Bangladesh's constitutional order. Constitutional conventions, as A.V. Dicey defined them, are the understandings and practices that govern the exercise of constitutional powers, even though they are not legally enforceable. They include conventions such as the convention that the President will appoint as Prime Minister the leader of the party or coalition commanding a parliamentary majority, the convention that ministers will resign if they lose the confidence of the Prime Minister, and the convention that judges will not participate in political activities.

Constitutional conventions are particularly important in a Westminster-style system like Bangladesh's, where the written constitution leaves many important aspects of governmental practice to be governed by convention rather than explicit constitutional provision. Islam's constitutional law book addresses constitutional conventions at various points, particularly in its analysis of the President's constitutional position and the Prime Minister's advisory role. But critics have argued that his treatment of conventions is less systematic and less theoretically sophisticated than his treatment of written constitutional provisions, reflecting a tendency to privilege the formal, written dimension of the constitutional order at the expense of the informal, conventional dimension.

CONCLUSION TO PART ONE: THE FOUNDATION OF A CONSTITUTIONAL TRADITION

The Enduring Significance of Mahmudul Islam's Constitutional Scholarship

As we conclude the first part of this eight-part textbook, it is worth reflecting on what makes Mahmudul Islam's constitutional scholarship not merely historically significant but enduringly relevant to the understanding and practice of constitutional law in Bangladesh and beyond.

The most fundamental answer is this: Islam understood that constitutional law is not merely a technical subject but a branch of political philosophy, that constitutional provisions are not merely rules to be mechanically applied but expressions of fundamental values about human dignity, political equality, and the proper limits of state power. He brought to the study of Bangladesh's constitution the kind of philosophical depth, historical consciousness, and comparative breadth that constitutional scholarship requires if it is to be genuinely illuminating rather than merely descriptive.

His constitutional law book did not simply describe Bangladesh's constitutional law as it was; it engaged critically with that law, identified its strengths and weaknesses, traced its historical development, placed it in comparative perspective, and pointed toward the directions in which it needed to develop if Bangladesh was to realize the constitutional aspirations of its founding moment. In doing so, it provided both a mirror and a guide for Bangladesh's constitutional community: a mirror in which the constitutional order could see itself clearly, and a guide toward which it could aspire.

The constitutional reform agenda of 2024-2026, which draws so directly and so deeply on the analytical framework that Islam developed over decades of constitutional scholarship and practice, is the most powerful testimony to the enduring relevance of his work. The questions he asked, the problems he identified, the values he championed, and the institutional reforms he advocated have become the central questions, problems, values, and reforms of Bangladesh's most ambitious and most consequential constitutional reform process.

Mahmudul Islam did not live to see the July 2024 uprising, the fall of the Hasina government, the formation of the Constitutional Reform Commission, or the July Charter of 2025. He passed away in February 2016, nearly a decade before these events. But the constitutional crisis of 2024 and the reform agenda that followed it can be read as, among many other things, a vindication of Islam's constitutional analysis: a demonstration that the structural weaknesses he identified in Bangladesh's constitutional order were real and consequential, and that the constitutional reforms he advocated were genuinely necessary for the realization of the democratic and rights-respecting constitutional order that Bangladesh aspired to be.

This first part of our textbook has laid the intellectual and biographical foundations for the deeper analysis that will follow in the remaining seven parts. We have explored who Mahmudul Islam was, how his legal mind was formed, what philosophical traditions animated his constitutional thinking, and how his constitutional thought engaged with the specific challenges and opportunities of Bangladesh's constitutional history. We have traced the development of his constitutional law book from its first edition in 1995 through its final edition in 2012, and we have assessed both its enduring contributions and its limitations and controversies.

In the parts that follow, we will go deeper into specific dimensions of his constitutional thought: the fundamental rights jurisprudence in detail, the structure of government and separation of powers, the constitutional dimensions of economic justice and social rights, the comparative constitutional framework and Bangladesh's place within the global constitutional order, the constitutional challenges of minority rights and pluralism, the constitutional framework for

administrative law and government accountability, and the constitutional vision for Bangladesh's future that Islam's scholarship points toward.

The journey through Mahmudul Islam's constitutional thought is a journey through the constitutional history and aspirations of one of the world's most densely populated and most politically dynamic nations. It is a journey that rewards careful attention, critical thinking, and a genuine commitment to the values of constitutional democracy, human dignity, and the rule of law.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART ONE

The primary source for this textbook is Mahmudul Islam's "Constitutional Law of Bangladesh," in its three editions (1st ed., Bangladesh Institute of Law and International Affairs, 1995; 2nd ed., Mullick Brothers, 2002; 3rd ed., Mullick Brothers, 2012). This work should be read alongside the constitutional text itself: the Constitution of the People's Republic of Bangladesh, as amended through 2018 and as proposed to be amended under the July Charter of 2025.

For the biographical background on Mahmudul Islam, the reader is directed to the tribute published in *The Daily Star* on February 23, 2016, by an assistant professor of law at Dhaka International University, and to the obituary published in *bdnews24.com* on February 17, 2016.

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For the basic structure doctrine in South Asian constitutional law, the essential case law includes: *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225 (India); *Anwar Hossain Chowdhury v. Bangladesh* (1989) BLD (Spl) 1 (Bangladesh); and *Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh* (2010) 62 DLR (AD) 298 (Bangladesh, Fifth Amendment case).

End of Part One. Part Two of this textbook will examine in detail the fundamental rights jurisprudence of Bangladesh's Supreme Court in light of Mahmudul Islam's constitutional analysis, addressing the specific provisions on equality, liberty, freedom of expression, religion, and the right to a fair trial, with particular attention to the development of public interest litigation and the expanding scope of constitutional rights protection in recent years.

PART TWO

THE ARCHITECTURE OF RIGHTS: FUNDAMENTAL FREEDOMS, JUDICIAL ENFORCEMENT, AND THE CONSTITUTIONAL PROMISE OF DIGNITY IN BANGLADESH

A Note to the Reader Entering Part Two

Part One of this textbook introduced you to Mahmudul Islam as a biographical subject, a legal mind, and a constitutional philosopher. It traced the arc of his life from Rangpur to Dhaka to Indiana and back to the courtrooms and chambers of Bangladesh's Supreme Court. It placed him in the turbulent constitutional history of Bangladesh, from the Liberation War and the founding 1972 Constitution through the years of martial law and constitutional subversion to the restoration of parliamentary democracy and the ongoing reform debates that continue into 2026. And it provided, through the lens of his life and work, an overview of the philosophical and jurisprudential traditions that animated his constitutional scholarship.

Part Two descends from the biographical and foundational to the doctrinal and analytical. Here we enter the heart of Bangladesh's constitutional order as Mahmudul Islam understood it, interrogated it, and commented upon it: the domain of fundamental rights. This is the terrain where constitutional law is most intimately connected to the lives of individual citizens, where abstract principles of human dignity, political equality, and personal freedom are translated into concrete legal rights enforceable against the power of the state, and where the tension between

the aspirations of a constitutional order and the realities of a political system are most sharply visible.

Islam's treatment of fundamental rights in his "Constitutional Law of Bangladesh" is among the most detailed and philosophically rich dimensions of his scholarship. It is the domain in which his dual formation in political science and law is most productively on display, and the domain in which his years of constitutional litigation gave his scholarly analysis its characteristic quality of hard-won practical wisdom. He did not write about fundamental rights from the safety of an academic armchair. He wrote as a man who had appeared before Bangladesh's Supreme Court in fundamental rights cases, who had seen the writ jurisdiction invoked by the brave and the desperate, who had watched judges struggle with the question of how far the constitutional text would take them in the protection of rights under conditions of political pressure and institutional vulnerability.

This part of the textbook takes Islam's treatment of fundamental rights as its organizing framework, but it does not confine itself to mere description of his analysis. It places his constitutional commentary in the context of the broader philosophical traditions of rights theory, comparative constitutional jurisprudence, and the evolving international human rights framework. It traces the development of Bangladesh's fundamental rights jurisprudence through decades of Supreme Court decisions, identifying the ways in which that jurisprudence has confirmed, extended, qualified, and sometimes departed from the analytical framework that Islam provided. And it connects the historical analysis to the urgent constitutional reform debates of 2024 through 2026, asking what Islam's constitutional thought contributes to the understanding of those debates and what the reform proposals in turn reveal about the strengths and limitations of his framework.

The chapters that follow are organized thematically and analytically. Chapter One establishes the theoretical and philosophical foundations of fundamental rights as a constitutional concept, drawing on the traditions of natural law theory, social contract theory, liberal rights theory, and international human rights law. Chapter Two examines the structural architecture of Part Three of Bangladesh's Constitution, analyzing how the fundamental rights provisions are organized, limited, and enforced. Chapters Three through Nine examine the specific rights provisions in detail, with particular attention to the judicial interpretation of each right and the controversies that have arisen in their application. Chapter Ten examines the writ jurisdiction of the High Court Division as the primary mechanism for fundamental rights enforcement, analyzing both the power and the limits of the writ remedy. Chapter Eleven examines the relationship between fundamental rights and public interest litigation, one of the most significant jurisprudential developments of the last three decades. Chapter Twelve examines the emerging jurisprudence of socioeconomic rights, a domain that Islam's constitutional analysis anticipated but that has developed significantly since his final edition. And Chapter Thirteen places Bangladesh's fundamental rights jurisprudence in comparative perspective, connecting it to developments in South Asian constitutional law, global constitutional trends, and the recent proposals of the Constitutional Reform Commission.

CHAPTER ONE: THE PHILOSOPHY OF FUNDAMENTAL RIGHTS -- THEORY, HISTORY, AND CONSTITUTIONAL ARCHITECTURE

1.1 Why Rights? The Philosophical Foundation

Before one can understand what Mahmudul Islam said about fundamental rights, and before one can critically assess the jurisprudence that Bangladesh's courts have developed in this domain, one must grapple with the prior question: what are fundamental rights, and why should a constitutional order guarantee them at all? This is not a question with an obvious answer, despite its apparent simplicity. It is, rather, one of the deepest and most contested questions in moral and political philosophy, and the different answers that have been proposed to it lead to different understandings of what fundamental rights are for, which rights deserve constitutional protection, how broadly or narrowly those rights should be interpreted, and how courts should approach the difficult cases in which rights claims conflict with other important values.

Mahmudul Islam was not, in the first instance, a philosopher. He was a constitutional lawyer, and his primary commitment was to the analysis and development of positive constitutional law. But he was a constitutional lawyer of unusual philosophical sophistication, and his treatment of fundamental rights reflects a serious engagement with the theoretical foundations of rights-based constitutionalism. Understanding his philosophical orientation is essential to understanding why he interpreted specific rights provisions the way he did, and why his interpretive approach has been both influential and contested.

The oldest philosophical tradition in which fundamental rights are grounded is the tradition of natural law. The natural law tradition, which traces its roots to ancient Greek philosophy (particularly the Stoics), was developed through medieval Christian philosophy (most notably by Thomas Aquinas), and was reformulated in secular terms by early modern thinkers like Hugo Grotius and Samuel Pufendorf, holds that there are certain moral principles that are not the creation of any human legislative authority but are rather grounded in the nature of human beings, in right reason, or in divine command. On this view, fundamental rights are not simply legal constructs; they are moral facts about the proper treatment of human beings, facts that any legitimate legal order must recognize and respect.

The most influential modern articulation of this natural law approach to rights is found in the tradition of social contract theory, particularly in the work of John Locke. Locke's theory, developed most fully in his "Two Treatises of Government" (1689), holds that human beings possess in the state of nature certain natural rights, preeminently the rights to life, liberty, and property, that they carry with them into political society. The purpose of government, on this view, is not to create rights but to protect rights that individuals already possess by nature. A government that systematically violates those rights forfeits its claim to the obedience of its subjects. This Lockean framework became the intellectual basis for the great declarations of rights of the late eighteenth century: the American Declaration of Independence (1776), the French Declaration of the Rights of Man and of the Citizen (1789), and ultimately the constitutional bills of rights that became standard features of liberal constitutional orders from the nineteenth century onward.

Immanuel Kant gave this tradition of natural rights a more rigorous philosophical foundation in his moral philosophy, particularly in the "Groundwork for the Metaphysics of Morals" (1785) and "The Metaphysics of Morals" (1797). Kant's approach rested on his categorical imperative, particularly the formulation that requires us to treat humanity, whether in our own person or in the person of any other, never merely as a means but always at the same time as an end. On Kantian grounds, fundamental rights are the legal expression of the requirement to respect the rational autonomy of each person: they are the set of protections that any just legal order must provide in order to ensure that each individual is treated as an end in themselves, possessed of dignity that demands respect, rather than as a mere instrument to be used by others or by the state for their purposes.

This Kantian framework has had enormous influence on twentieth century rights theory, most notably through the work of John Rawls, whose "A Theory of Justice" (1971) attempted to provide a comprehensive philosophical foundation for a liberal constitutional order built around the protection of basic rights and liberties. Rawls argued that a just society is one organized according to principles that rational persons would choose from behind a "veil of ignorance," not knowing their place in society, their class position, their natural assets, or their conception of the good. From this original position, Rawls argued, rational persons would choose two principles: first, that each person should have equal basic liberties, compatible with a similar scheme of liberties for all; and second, that social and economic inequalities should be arranged so as to benefit the least advantaged members of society.

The Rawlsian framework is important for understanding fundamental rights constitutionalism because it provides a rigorous philosophical justification for both the civil and political rights that are typically guaranteed by bills of rights (as expressions of Rawls's first principle of equal basic liberties) and for certain socioeconomic rights and state obligations (as expressions of Rawls's second principle of distributive justice). It also highlights the priority that Rawls assigns to liberty: the first principle of equal basic liberties takes lexical priority over the second principle of fair equality of opportunity and the difference principle, meaning that violations of basic liberties cannot be justified by appeals to greater overall utility or economic efficiency.

The utilitarian tradition, associated most prominently with Jeremy Bentham and John Stuart Mill, offers a very different philosophical foundation for rights. Bentham famously dismissed natural rights as "nonsense upon stilts," arguing that the only coherent basis for legal rights is their utility, their contribution to the aggregate happiness of society. On this view, constitutional rights are justified not because human beings possess them by nature or by reason, but because protecting them produces better social outcomes than not protecting them. Mill's version of utilitarianism, developed in "On Liberty" (1859), offered a more sympathetic account of individual liberty, arguing that the presumption in any society that values long-run social welfare should be strongly in favor of individual freedom and against state interference. But even Mill's more rights-friendly utilitarianism remains at bottom a consequentialist theory: liberty is valued because of what it produces, not because it is an intrinsic attribute of personhood.

The utilitarian approach to rights is important for constitutional analysis because it provides the philosophical basis for understanding why rights are not absolute, why they must be balanced against other social values, and why the limitation clauses that appear in most constitutional bills

of rights are a legitimate feature of constitutional design rather than a betrayal of the commitment to rights. If fundamental rights are justified by their contribution to human welfare rather than by their intrinsic character as attributes of personhood, then there will be circumstances in which restricting a right is justified because the social gains from restriction outweigh the individual losses from its curtailment. The challenge is to ensure that such calculations are made honestly and rigorously, rather than being used as a pretext for rights-violating policies.

A third philosophical tradition that has profoundly influenced rights theory, particularly in the twentieth century, is the tradition of republican political theory, which understands freedom not merely as the absence of actual interference but as the absence of domination, of subjection to the arbitrary will of another. On the republican conception, developed in the recent philosophical tradition most prominently by Philip Pettit in "Republicanism: A Theory of Freedom and Government" (1997), a person is free not when no one actually interferes with them, but when no one has the power to interfere with them arbitrarily. Fundamental rights, on this view, are constitutional mechanisms for eliminating or constraining domination: they protect individuals from being subject to the arbitrary will of other individuals or of the state.

The republican tradition has particular resonance in the context of Bangladesh's constitutional history, given that the founding moment of Bangladesh's constitutional order was precisely a revolt against domination: the domination of the Bengali-speaking majority of East Pakistan by the West Pakistani political and military establishment. The values of anti-domination, self-government, and equal citizenship that animated the Liberation War of 1971 find their constitutional expression most directly in the fundamental rights provisions of the 1972 Constitution, understood through the lens of republican freedom as the guarantee that no citizen of Bangladesh will be subject to the arbitrary power of the state or of any dominant group within society.

Mahmudul Islam's own philosophical orientation drew on elements of all three of these traditions without being reducible to any one of them. He approached fundamental rights with a strong commitment to the dignity of the individual person that reflects Kantian and natural law influences. He was attentive to the social purposes that rights serve and to the necessity of balancing rights against other important values, reflecting utilitarian and consequentialist sensitivities. And he showed a deep concern for the structural conditions of political freedom, for the institutional arrangements that prevent the concentration of power and protect citizens from domination, that reflects the republican tradition. What unified these diverse influences in his constitutional thought was a commitment to constitutionalism itself: the belief that a constitutional order committed to the rule of law, the separation of powers, and the judicial protection of fundamental rights was not merely a better system of government than the available alternatives, but a morally necessary condition for a just political community.

1.2 The International Framework: Human Rights as Global Constitutional Standard

The philosophical traditions just discussed are not merely academic. They have been translated, over the course of the twentieth century and into the twenty-first, into an increasingly comprehensive international framework of human rights law that interacts in complex and

important ways with the domestic constitutional protection of fundamental rights. Understanding this international framework is essential to understanding both Mahmudul Islam's constitutional thought and the contemporary jurisprudence of Bangladesh's Supreme Court, which has increasingly engaged with international human rights standards in its interpretation of fundamental rights provisions.

The international human rights framework was inaugurated by the Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly on December 10, 1948. The UDHR was conceived, in the immediate aftermath of the Holocaust and of World War II more generally, as a statement of the minimum standards of human dignity that every human being is entitled to, regardless of their nationality, ethnicity, religion, or political status. It was deliberately framed as a universal document, applicable to all human beings everywhere, rather than as a statement of the particular values of any one civilization or political tradition.

The UDHR was followed by the two International Covenants adopted in 1966: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the UDHR, these two covenants form the "International Bill of Human Rights," the foundational document of the international human rights system. Bangladesh has ratified both covenants, which means that it has accepted, as a matter of international legal obligation, the obligation to respect, protect, and fulfill the rights they guarantee.

The ICCPR guarantees a comprehensive catalogue of civil and political rights that overlap substantially with the fundamental rights provisions of Bangladesh's Constitution: the right to life (Article 6), freedom from torture and cruel, inhuman, or degrading treatment (Article 7), freedom from slavery and forced labour (Article 8), freedom from arbitrary arrest and detention (Article 9), the right to a fair trial (Article 14), the right to privacy (Article 17), freedoms of thought, conscience, and religion (Article 18), freedom of expression (Article 19), freedom of assembly (Article 21), freedom of association (Article 22), and the right to equality before the law and equal protection of the law (Article 26), among others.

The ICESCR guarantees economic, social, and cultural rights including the right to work (Articles 6 and 7), the right to social security (Article 9), the rights of families and children (Articles 10 and 11), the right to an adequate standard of living including food, clothing, and housing (Article 11), the right to the highest attainable standard of health (Article 12), the right to education (Articles 13 and 14), and the right to participate in cultural life (Article 15). These rights correspond broadly to the fundamental principles of state policy (directive principles) in Part Two of Bangladesh's Constitution, which are framed as directive principles rather than as justiciable rights. The question of whether and how these social and economic rights should be made justiciable has been one of the most important and contested issues in Bangladesh's constitutional jurisprudence, and it has become one of the central subjects of the 2024-2026 constitutional reform agenda.

In addition to the two covenants, Bangladesh has ratified numerous other international human rights instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention

Against Torture (CAT), and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). These treaty obligations create a comprehensive set of international standards against which Bangladesh's domestic fundamental rights jurisprudence can be assessed.

Mahmudul Islam was attentive to the international human rights framework in his constitutional scholarship, and he drew on it frequently in his analysis of specific fundamental rights provisions. He argued, consistent with a view that has gained increasing acceptance in South Asian constitutional jurisprudence, that international human rights treaties ratified by Bangladesh should be treated as interpretive guides for the domestic constitutional rights provisions, even where those treaties have not been directly incorporated into domestic law. This approach, which has been adopted by courts in India, Sri Lanka, and other common law jurisdictions, allows courts to use international human rights standards to give content to open-textured constitutional provisions and to fill gaps in the domestic constitutional framework.

This interpretive approach has become increasingly important in the period since Islam's final edition in 2012. The jurisprudential developments of 2013 through 2026 have seen Bangladesh's Supreme Court increasingly engage with international human rights standards in its fundamental rights decisions, a trend that reflects the growing integration of Bangladesh into the global human rights system and the increasing sophistication of the legal arguments made before the court in constitutional cases. The Constitutional Reform Commission's 2025 report explicitly recommended that the new constitutional framework should incorporate international human rights standards more directly and comprehensively, including through the justiciability of socioeconomic rights that are currently only aspirationally protected.

1.3 The Constitutional Architecture of Part Three: Structure, Scope, and Limitations

The fundamental rights guaranteed by the Constitution of Bangladesh are contained in Part Three, which extends from Article 26 to Article 47A. This part of the Constitution contains twenty-two articles that together constitute Bangladesh's bill of rights, establishing a comprehensive framework for the protection of civil and political freedoms and for the enforcement of those freedoms through the courts. Understanding the structure of this part of the Constitution is essential to understanding how Islam analyzed the individual rights provisions and how Bangladesh's courts have approached the task of fundamental rights adjudication.

Article 26 is the gateway provision, the article that gives Part Three its constitutional authority and that establishes its relationship to other parts of the constitutional and legislative framework. It provides, first, that all existing laws inconsistent with the fundamental rights provisions are, to the extent of such inconsistency, void; and second, that the state shall not make any law inconsistent with any provision of Part Three and any law made in contravention of this clause shall, to the extent of the contravention, be void. This provision establishes the primacy of fundamental rights over ordinary legislation and creates the foundation for judicial review of legislation on fundamental rights grounds.

Islam's analysis of Article 26 emphasized its radical implications for the existing legal order. The provision that pre-existing laws inconsistent with the fundamental rights are void was not a mere

transitional arrangement but a substantive constitutional declaration that reorganized the entire hierarchy of legal norms. Any law, however old, however firmly established in practice, however deeply integrated into the social and economic fabric of the country, was rendered constitutionally invalid to the extent of its inconsistency with the fundamental rights provisions. This was a bold constitutional assertion, one that invited significant litigation about the constitutional validity of colonial-era laws, of post-independence legislation that had been enacted without constitutional constraints, and of the complex body of personal law (religious family law) that governed the most intimate aspects of the lives of millions of Bangladeshis.

The scope of the fundamental rights guarantee is defined not only by the specific rights provisions but also by the entities against whom those rights can be invoked. This is the question of horizontal versus vertical application of constitutional rights. In the vertical dimension, the fundamental rights are unambiguously applicable against the state: they protect individuals from violations of their rights by public authorities, government officials, and state institutions. The more contested question is whether the fundamental rights apply horizontally, in disputes between private individuals and entities. Islam's analysis of this question was careful and nuanced. He acknowledged that the textual framing of the rights provisions generally contemplated vertical application, with the state as the primary duty-bearer. But he also recognized that the emerging doctrine of indirect horizontal effect, developed in comparative constitutional jurisprudence, allowed courts to use constitutional rights as interpretive frameworks for private law relations, thereby extending the reach of the constitutional order into the private sphere without formally converting constitutional rights into directly enforceable norms in private litigation.

The limitation clauses that appear throughout Part Three are as important as the rights provisions themselves, because they define the circumstances under which the state may restrict rights that would otherwise be protected. The structure of limitation in Bangladesh's Constitution does not follow a single uniform model. Some rights provisions contain their own internal limitation clauses, specifying the grounds on which restrictions may be imposed. Others are subject to Article 26's general requirement that restrictive legislation not be "inconsistent with" the relevant rights provision, which leaves considerable room for judicial interpretation. And some rights are protected in absolute or near-absolute terms, with no explicit limitation clause allowing their restriction.

Islam devoted considerable analytical attention to the limitation clauses throughout his constitutional law book, developing what might be described as a theory of proportionality *avant la lettre*, an understanding that any limitation on a fundamental right must be proportionate to the legitimate objective it pursues, that the means chosen must be rationally related to the objective, and that the restriction must not impose a burden on the right greater than is necessary to achieve the objective. This proportionality analysis, which Islam derived from the logic of constitutional rights protection rather than from any explicit textual source, has been increasingly adopted by Bangladesh's Supreme Court in its fundamental rights jurisprudence, particularly in the period after 2010. It reflects the global convergence of constitutional rights adjudication around proportionality as the dominant framework for resolving conflicts between rights and other important social values.

CHAPTER TWO: EQUALITY, DIGNITY, AND THE PROHIBITION OF DISCRIMINATION -- ARTICLES 27, 28, 29, AND 31

2.1 Equality Before the Law and Equal Protection: The Foundational Commitment

The commitment to equality is the most foundational principle of Bangladesh's fundamental rights framework, and it finds expression in a cluster of inter-related constitutional provisions: Article 27 (equality before the law and equal protection of the law), Article 28 (prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth), Article 29 (equality of opportunity in public employment), and Article 31 (the right to protection of law). Together, these provisions constitute what Islam described as the constitutional architecture of equal citizenship: the legal framework through which the aspiration of the 1971 Liberation War to create a state of equal citizens is given concrete constitutional form.

Article 27 provides that all citizens are equal before the law and are entitled to equal protection of the law. This provision, derived directly from the jurisprudential tradition of the Fourteenth Amendment to the United States Constitution and from the parallel provisions of the Indian Constitution (Article 14) and the Pakistani constitutions, encodes two related but conceptually distinct principles. Equality before the law, in the classical formulation associated with A.V. Dicey, means that every person, regardless of rank, status, or political influence, is subject to the ordinary law of the land and must answer before the ordinary courts for any alleged wrongdoing. It is the principle that there is no special law for special persons: the king is under the law, not above it. Equal protection of the law, by contrast, is a more substantive principle: it means that the law must treat similarly situated persons similarly, and that when the law draws distinctions between different groups of people, it must do so on the basis of relevant and rational criteria.

Islam's analysis of Article 27 was philosophically sophisticated in a way that distinguished it from the more formalistic treatments that had characterized earlier scholarship. He recognized that formal equality, the principle that the law must apply the same rules to all persons in the same category, was a necessary but insufficient condition for genuine equal citizenship. The history of discrimination, whether based on religion, race, caste, sex, or other characteristics, had produced systematic inequalities of opportunity, status, and power that formal equality alone could not remedy. A law that applied the same criteria of eligibility for a government job to a person from a privileged background and a person from a historically marginalized background was formally equal but substantively unequal, because the two individuals came to the application process with vastly different histories, resources, and opportunities.

This recognition led Islam to engage seriously with the concept of substantive equality and with the constitutional basis for affirmative action or positive discrimination. He analyzed the constitutional provisions on reservation and preferential treatment (Article 28(4), which allows the state to make special provision for women or for children, and Article 29(3), which allows the state to give preferential treatment to backward sections of citizens) and argued that these provisions were not exceptions to the equality guarantee but expressions of a deeper understanding of what equality requires. Genuine equality of opportunity is not achieved by

treating everyone identically regardless of the structural inequalities that have shaped their lives; it requires taking those inequalities into account and providing additional support to those who have been disadvantaged by history, circumstance, or discrimination.

This argument, which Islam developed on the basis of the constitutional text and through comparative analysis, anticipates one of the most significant theoretical developments in equality jurisprudence of the last three decades: the shift from anti-discrimination equality to anti-subordination equality. The anti-discrimination model focuses on the process by which distinctions are made, asking whether individuals have been treated differently on the basis of prohibited characteristics. The anti-subordination model focuses on the outcome: whether a law or practice contributes to or perpetuates the systematic disadvantage of historically marginalized groups. The anti-subordination model provides a stronger constitutional basis for affirmative action, for policies designed to remedy historical injustices, and for a more expansive reading of the equality guarantee that goes beyond formal symmetry to address structural inequality.

2.2 The Interpretation of "Equality Before the Law" in Bangladesh's Jurisprudence

The development of Article 27's jurisprudence in Bangladesh's Supreme Court has been one of the most intellectually significant dimensions of constitutional adjudication in the country, and it provides a rich body of material through which to assess both the strengths and the limits of Islam's constitutional analysis.

The early jurisprudence of the High Court Division and Appellate Division on Article 27 was heavily influenced by the Indian Supreme Court's interpretation of Article 14 of the Indian Constitution, which uses language identical to that of Bangladesh's Article 27. The Indian courts had developed, by the 1950s and 1960s, the concept of the "intelligible differentia" test: a classification made by legislation is constitutionally permissible under Article 14 if it is based on an intelligible differentia (that is, some distinguishing characteristic that marks out the persons grouped together from those excluded from the group), and if the differentia has a rational nexus to the object sought to be achieved by the legislation. This test, in the hands of the early Indian Supreme Court, was relatively deferential to legislative judgment: courts would uphold a classification as long as they could identify some rational basis for it, even if the basis was not stated in the legislation itself.

Bangladesh's courts adopted this rational basis test in their early constitutional jurisprudence, and it remained the dominant framework for Article 27 analysis through much of the 1980s and 1990s. Islam's analysis in his constitutional law book engaged critically with this approach, arguing that the rational basis test, while correct in its basic logic, was being applied too deferentially in ways that allowed the legislature to impose unjustifiable distinctions without meaningful constitutional scrutiny. He drew on the Indian Supreme Court's later, more demanding jurisprudence, which had begun to apply a more searching review to classifications that touched on fundamental rights or that affected vulnerable groups, and argued that Bangladesh's courts should adopt a similar graduated approach: deferential rational basis review for ordinary legislative classifications, but more searching review for classifications based on inherently suspect criteria (religion, race, sex) or for classifications that impinged on the exercise of fundamental rights.

This graduated or tiered approach to equality review, which Islam advocated on both doctrinal and philosophical grounds, has become increasingly influential in Bangladesh's constitutional jurisprudence. The Appellate Division's decisions in the years after 2000 show a progressively more nuanced engagement with the question of when heightened judicial scrutiny is appropriate, reflecting a growing sophistication in the court's approach to equality analysis.

The public importance of Article 27 jurisprudence was dramatically demonstrated by the controversy over the quota reform movement that ultimately triggered the July 2024 uprising. The quota system for government service employment in Bangladesh had its origins in the constitutional provisions for affirmative action (Articles 28(4) and 29(3)), but had been significantly expanded over the decades to reserve substantial proportions of government positions for various categories of beneficiaries, including freedom fighters' descendants, women, persons with disabilities, and persons from economically backward districts. By 2024, the combined quotas reserved approximately 56% of government positions, leaving only 44% open to general merit competition.

The quota reform movement, which began among university students in 2018 and returned with greater force in 2024, argued that the quota system as it had evolved was inconsistent with the constitutional guarantee of equality of opportunity in public employment (Article 29), that it had become detached from its original constitutional justification of remedying historical disadvantage, and that it had been captured by political interests that perpetuated it for reasons unrelated to social justice. The constitutional questions raised by the quota controversy -- whether the existing quota percentages were proportionate to the constitutional objectives they were supposed to serve, whether the definition of beneficiary categories was rational and relevant, and whether the quota system had crossed the line from constitutionally permissible affirmative action to constitutionally impermissible discrimination against the majority -- are precisely the questions that Islam's analytical framework for Article 27 and Article 29 is best equipped to illuminate.

The Supreme Court's judgment on the quota system, delivered in the immediate aftermath of the July 2024 uprising, addressed some of these constitutional questions while leaving others unresolved. The Constitutional Reform Commission's subsequent analysis of the quota issue, which formed part of its comprehensive report submitted in January 2025, drew extensively on the framework of equality jurisprudence to evaluate both the existing quota system and the reform proposals that had been generated by the uprising. This engagement between constitutional doctrine and social movement, between the analytical framework developed by scholars like Islam and the urgent political questions raised by millions of young Bangladeshis demanding fair access to government employment, exemplifies the way in which constitutional law operates not merely as an academic discipline but as a living framework for the resolution of the most pressing questions of social justice.

2.3 Article 28: The Prohibition of Discrimination and Its Complex History

Article 28 of Bangladesh's Constitution provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. It further provides that women shall have equal rights with men in all spheres of the state and of public life. And it

provides that no citizen shall, on grounds only of religion, race, caste, sex or place of birth, be subject to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or any educational institution. Article 28(4) allows special provision for women or children.

Islam's analysis of Article 28 was one of the most politically sensitive dimensions of his constitutional scholarship, precisely because the prohibition of discrimination on grounds of religion intersected with one of the most contested aspects of Bangladesh's constitutional order: the relationship between the secular state and the religious communities that make up its citizenry, and more specifically the relationship between the constitutional guarantee of gender equality and the body of religious personal law that governs marriage, divorce, and inheritance for Muslim, Hindu, and Christian citizens.

The 1972 Constitution, in its original form, was explicitly secular in its foundational principles, declaring secularism (along with nationalism, democracy, and socialism) as one of the four fundamental principles of state policy. Secularism, in the Bangladeshi constitutional context, did not mean hostility to religion or the exclusion of religious values from public life; it meant, as Islam explained in his constitutional analysis, the equal treatment of all religious communities by the state, the rejection of religious discrimination in the exercise of state power, and the insistence that the state should not identify itself exclusively with any one religious tradition. This was a constitutionally coherent and politically significant commitment in a country where the majority of the population was Muslim but where substantial Hindu, Christian, and Buddhist minorities also lived and where the founding moment of the nation had explicitly rejected the use of religion as the basis for political community (since it was precisely the theory of Pakistan as a Muslim nation that Bangladesh's independence repudiated).

The subsequent amendments to the Constitution, particularly the fifth amendment of 1979 (which removed secularism from the fundamental principles and inserted the bismillah into the preamble) and the eighth amendment of 1988 (which declared Islam the state religion), significantly complicated this constitutional framework. Islam analyzed these amendments with barely concealed critical concern. He acknowledged that the formal constitutional text had been changed, but he argued, drawing on the basic structure doctrine developed in Bangladesh's own courts (most fully in the Anwar Hossain Chowdhury case of 1989) and on comparative constitutional jurisprudence, that the fundamental commitment to equal citizenship regardless of religion was part of the basic structure of Bangladesh's Constitution and could not be validly abrogated by formal constitutional amendment.

This argument was partially vindicated by the Appellate Division's decision in the Fifth Amendment case (*Bangladesh Italian Marble Works Ltd. v. Government of Bangladesh*, 2010), which declared the fifth amendment void insofar as it ratified unconstitutional martial law proclamations, and restored the original four principles of state policy including secularism to the constitution. But the eighth amendment's declaration of Islam as the state religion survived this judgment and was not challenged in the Fifth Amendment case, creating an ongoing constitutional tension between the restored principle of secularism and the continued status of Islam as the state religion, a tension that the Constitutional Reform Commission's 2025 report identified as one of the most important unresolved questions in Bangladesh's constitutional order.

The prohibition of discrimination on grounds of sex in Article 28 raises what is perhaps the most profound and practically significant constitutional question in the domain of equality rights: the relationship between the constitutional guarantee of gender equality and the personal law systems that govern the most intimate dimensions of life for the majority of Bangladeshis. Muslim personal law in Bangladesh, as applied by the courts under the Muslim Family Laws Ordinance 1961 and other statutes, treats men and women differently in significant respects. In inheritance, a daughter receives half the share of a son. In marriage, a Muslim man may practice polygyny (subject to certain procedural requirements under the 1961 Ordinance) while a Muslim woman may not practice polyandry. In divorce, a Muslim man may pronounce talaq (unilateral repudiation of the marriage) in circumstances where a Muslim woman has no equivalent right; she must obtain a divorce through the court under the Dissolution of Muslim Marriages Act 1939.

Are these differential treatments of men and women under Muslim personal law inconsistent with Article 28's prohibition of discrimination on grounds of sex? This is the question that Islam engaged with most carefully and most honestly in his constitutional scholarship, and his analysis is worth examining in detail because it reveals both the analytical power and the practical limits of his constitutional thought.

Islam's analysis of this question proceeded from two competing considerations. On the one hand, the constitutional text of Article 28 was clear: the state shall not discriminate against citizens on grounds of sex. The word "state" in constitutional jurisprudence encompasses not only the executive government and the legislature, but also the courts. When courts apply and enforce rules of personal law that treat women differently from men, they are, in a meaningful sense, discriminating on grounds of sex in the exercise of state judicial power. On this analysis, the application of discriminatory rules of Muslim personal law by Bangladesh's courts would be inconsistent with Article 28.

On the other hand, Islam recognized, with characteristic intellectual honesty, that Article 28 itself contains a limitation: it prohibits discrimination on grounds "only" of sex, which has been interpreted to mean that differential treatment based on a combination of factors, including religion alongside sex, may not be prohibited by Article 28. And he recognized, as a pragmatic constitutional lawyer, that the judicial invalidation of Muslim personal law on constitutional grounds would create enormous practical difficulties: it would affect the legal relationships of the vast majority of Bangladeshis, it would involve the courts in profound questions of religious interpretation that are beyond their institutional competence, and it would generate massive political and social resistance.

His resolution of this tension was to argue that the appropriate path forward was legislative reform rather than judicial invalidation: that Parliament should exercise its constitutional responsibility to progressively harmonize personal law with the constitutional principles of gender equality, using the constitutional commitment to gender equality as the framework and the inspiration for that reform, while recognizing that the courts were not the appropriate institution to effect a wholesale transformation of the personal law system through constitutional adjudication.

This position has been criticized by feminist constitutional scholars, most prominently by scholars like Shahnaz Huda and Sara Hossain, who have argued that Islam's deference to the legislative process in the domain of personal law was intellectually inconsistent with his more robust approach to constitutional rights enforcement in other domains, and that it reflected an underestimation of the urgency of gender equality as a constitutional value. The critique has force: the pace of legislative reform in the domain of personal law has been extraordinarily slow, and the constitutional promise of gender equality remains significantly unrealized in the domain of family law. The Constitutional Reform Commission's 2025 report explicitly identified the gap between the constitutional guarantee of gender equality and the reality of personal law as one of the most important failures of Bangladesh's constitutional order to be addressed in the reform process.

2.4 Article 29: Equality of Opportunity in Public Employment

Article 29 guarantees equality of opportunity for all citizens in respect of employment or office in the service of the Republic. It prohibits discrimination in public employment on grounds of religion, race, caste, sex, or place of birth. It also prohibits the conferment of any benefit, by the state, upon any religious institution or group exclusively associated with any religion. And it contains the affirmative action clause allowing the state to make special provision for backward sections of citizens.

The jurisprudence of Article 29 is intimately connected to the quota controversy discussed above, but it raises additional questions of constitutional principle beyond the specific issue of quota percentages. One of the most important of these questions is the constitutional status of political or ideological tests for public employment. In Bangladesh, as in many countries with turbulent political histories, there has been a persistent tension between the principle of merit-based public employment and the tendency of successive governments to favor their political supporters in recruitment to the civil service. This tension reaches its constitutional peak when a government imposes explicitly ideological or political tests for employment in the public service.

Islam's analysis of Article 29 argued that the constitutional guarantee of equality of opportunity in public employment created a constitutional obligation of merit-based recruitment, which in principle precluded the imposition of political or ideological tests that were irrelevant to the competence required for the position in question. He acknowledged the complexity of this principle in the context of political appointments to senior policy positions, where some degree of political confidence between the minister and senior officials might be constitutionally defensible. But he was clear that the politicization of the ordinary civil service, the replacement of career civil servants with political loyalists at all levels of the public administration, was inconsistent with Article 29's guarantee of equal opportunity in public employment.

This analysis has become urgently relevant in the context of the post-2024 constitutional reform debates. One of the central themes of the July 2024 uprising was the deep politicization of Bangladesh's public institutions, including not only the civil service but also the police, the judiciary, and the constitutional commissions. The Constitutional Reform Commission's 2025 report identified the depoliticization of public institutions as one of the most important institutional reforms required to realize the constitutional promise of equal citizenship, and it

proposed a range of structural reforms including the establishment of an independent Public Service Commission, insulated from political interference, to oversee recruitment and promotion in the civil service.

CHAPTER THREE: THE RIGHT TO LIFE AND PERSONAL LIBERTY -- ARTICLE 32 AND ITS EXPANDING JURISPRUDENCE

3.1 The Core of All Rights: Life and Liberty

If any single provision in Bangladesh's fundamental rights framework deserves to be described as the cornerstone upon which the entire edifice of constitutional rights protection rests, it is Article 32. This article provides that no person shall be deprived of life or personal liberty save in accordance with law. Its language is spare, almost minimalist, but the jurisprudential edifice that has been built upon it is vast and continues to expand in ways that even Islam, writing in 2012, could not fully anticipate.

The right to life and personal liberty protected by Article 32 is, at the most basic level, a guarantee against arbitrary killing and arbitrary imprisonment by agents of the state. A state that kills its citizens without legal authority, or that detains them without legal justification, violates Article 32. But the provision is far more than a protection against the most extreme forms of state violence. Through a process of judicial interpretation that has been one of the most creative and consequential developments in Bangladesh's constitutional jurisprudence, Article 32 has been expanded to encompass a much wider range of protections, including the right to live with dignity, the right to a livelihood, the right to a healthy environment, and the right to access to justice.

Islam's analysis of Article 32 in his constitutional law book established the foundational framework for understanding this provision and its jurisprudential potential. He began, as a careful textual analyst, with the phrase "save in accordance with law." This phrase is critical because it determines the level of constitutional protection that Article 32 provides: if "law" means any law enacted by the legislature, then the protection of Article 32 is relatively weak, because the legislature could simply enact a law authorizing the deprivation of life or liberty and then that deprivation would be "in accordance with law" even if it was substantively unjust. But if "law" means not merely any legislative enactment but rather law that is consistent with the other provisions of the Constitution, with the principles of natural justice, and with the requirements of substantive due process, then Article 32 provides a much more robust protection that cannot be defeated by the simple expedient of passing legislation.

Islam argued, on the basis of comparative constitutional jurisprudence and of the overall structure and philosophy of Bangladesh's Constitution, that the phrase "in accordance with law" in Article 32 must be interpreted in the more demanding sense: that it requires not merely formal legal authority for a deprivation of life or liberty, but substantive legal justification that satisfies the requirements of fairness, proportionality, and respect for human dignity. This interpretation, which brought Bangladesh's Article 32 closer to the American concept of "substantive due

process" and to the Indian interpretation of Article 21 of the Indian Constitution, has been broadly accepted by Bangladesh's Supreme Court in its subsequent jurisprudence.

3.2 The Expansion of Article 32: From Life to Livelihood to Environment

The most dramatic development in Article 32 jurisprudence, both in Bangladesh and in the parallel Indian jurisprudence that has influenced it, has been the expansion of the "right to life" to encompass not merely physical survival but the full range of conditions necessary for a life of dignity and humanity. This expansive interpretation, which has been described by constitutional scholars as the "constitutional welfare state," holds that the state's obligation under Article 32 is not merely to refrain from taking life arbitrarily but to take positive steps to protect and promote the conditions of a life worth living.

The most significant early step in this expansion was the recognition of the right to livelihood as a component of the right to life. The logic of this extension is compelling: a person who is denied the means to earn a living, who is reduced to destitution by state action, suffers a deprivation that is in its practical effects nearly equivalent to a deprivation of life itself. If the right to life means anything more than the right to biological survival, it must include some protection for the conditions of economic subsistence. This reasoning, developed most fully in the Indian Supreme Court's landmark decisions in *Olga Tellis v. Bombay Municipal Corporation* (1985) and *Bandhua Mukti Morcha v. Union of India* (1984), has been adopted by Bangladesh's High Court Division in a series of decisions that have invoked Article 32 to protect the economic interests of vulnerable groups, including street vendors, slum dwellers, and workers facing arbitrary dismissal from employment.

A second major extension of Article 32 jurisprudence has been the recognition of the right to a healthy environment as a component of the right to life. The reasoning here is equally compelling: environmental degradation that destroys the air, water, and physical environment upon which human beings depend for their survival and health constitutes a deprivation of the conditions of life in a meaningful sense. This extension of Article 32 has been particularly significant in Bangladesh, which faces among the most severe environmental challenges of any country in the world: air pollution in Dhaka, water contamination by arsenic and industrial effluents, riverbank erosion, deforestation, and above all the existential threat of climate change and sea-level rise that threatens to inundate large portions of the country's low-lying coastal regions.

Bangladesh's High Court Division has been relatively active in developing environmental jurisprudence under Article 32, issuing writs to protect rivers, forests, and other natural resources from arbitrary destruction. The Buriganga River case, in which the High Court Division issued orders for the enforcement of environmental regulations against industries polluting the river, is perhaps the most prominent early example of this environmental constitutional jurisprudence. More recently, the climate-related litigation that has begun to emerge in Bangladesh's courts, seeking constitutional protection against the failure of the state to take adequate measures to address the catastrophic risks of climate change, represents the cutting edge of Article 32 jurisprudence and has attracted significant attention from the global constitutional law community.

Islam's analysis of Article 32 in his 2012 edition anticipated, without fully developing, the environmental dimension of the right to life. He acknowledged that the natural resources of Bangladesh, including its rivers, forests, and coastal environment, were intimately connected to the conditions of life for millions of Bangladeshis, and that the state's constitutional obligation to protect life extended to the protection of these resources. But the full development of environmental constitutional jurisprudence was still in its early stages when he wrote, and the climate crisis had not yet reached the level of constitutional urgency that it has since attained.

The period from 2013 to 2026 has seen a significant acceleration of environmental constitutional litigation in Bangladesh, driven partly by the growing severity of environmental crises and partly by the increasing sophistication of civil society organizations and environmental lawyers who have developed the legal arguments needed to translate environmental claims into constitutional rights language. The Constitutional Reform Commission's 2025 report recommended the explicit recognition of environmental rights, including the right to a clean and healthy environment, as a constitutional fundamental right, going beyond the existing Article 32 jurisprudence to provide explicit textual support for environmental protection as a constitutional obligation.

3.3 Custodial Death, Torture, and the Right to Life: The Dark Side of Article 32

While the expansive interpretation of Article 32 represents one of the most creative and positive developments in Bangladesh's constitutional jurisprudence, the application of the article in its most basic sense, as a protection against state-sponsored killing and torture, has been one of the most challenging and disturbing dimensions of Bangladesh's constitutional experience. The record of custodial death, torture, and enforced disappearance in Bangladesh is a deeply troubling one, and it represents, in the starkest possible terms, the gap between constitutional aspiration and political reality that has been one of the defining features of Bangladesh's constitutional history.

Custodial death, the death of a person while in the custody of the police or other state security forces, is a violation of Article 32 in its most elemental sense. A person who is killed by state agents, whether through deliberate violence or through the negligent failure to provide necessary medical care while in custody, has been deprived of life by the state without any legal authority. Yet custodial deaths have occurred with disturbing regularity in Bangladesh throughout its constitutional history, and the legal accountability of the officials responsible has been limited and inconsistent.

Islam's treatment of this issue in his constitutional law book was characteristically direct. He identified custodial death and torture as among the most serious violations of Article 32, argued that the state bore a constitutional duty to investigate every case of custodial death and to ensure that those responsible were held accountable, and noted with evident concern the systemic failures of the investigative and prosecutorial processes that had allowed many such cases to go uninvestigated or unpunished. He also engaged with the question of the constitutional obligations of the judiciary in cases of alleged custodial death or torture, arguing that the High Court Division's writ jurisdiction was available to investigate such allegations and to issue appropriate orders for investigation, compensation, and accountability.

The Supreme Court's engagement with custodial death and torture has been significant but uneven. The High Court Division has issued writs in a number of important cases, ordering investigations, awarding compensation to families of victims, and issuing guidelines for the treatment of persons in custody. But the enforcement of these orders has been incomplete, and the systemic patterns of custodial abuse have persisted despite repeated judicial interventions.

The most contested dimension of this domain is the practice known as "crossfire" or "encounter killings," extrajudicial executions of alleged criminals by law enforcement officers operating under the cover of manufactured claims of self-defense. This practice became particularly prevalent during the Rapid Action Battalion's (RAB) operations from 2004 onward, and continued through the decades that followed, generating massive controversy and consistent condemnation from human rights organizations, the United Nations human rights system, and foreign governments. The practice raises fundamental Article 32 questions: can the state lawfully authorize, even indirectly, the execution of persons suspected of criminal activity without trial, without conviction, and without any of the procedural safeguards that the Constitution requires? The answer, from the perspective of constitutional principle, is unambiguously no. But the practice persisted for years in the face of constitutional principle, reflecting the gap between constitutional norm and political power that is one of the recurring themes of Bangladesh's constitutional history.

The July 2024 uprising brought renewed attention to extrajudicial killings, particularly in the context of the police violence against protesters that resulted in significant loss of life. The Constitutional Reform Commission's report identified the accountability of law enforcement agencies for extrajudicial violence as one of the most urgent reform priorities, and the July Charter of 2025 included provisions for strengthening the constitutional protections against extrajudicial violence and for establishing more effective mechanisms of accountability for law enforcement agencies.

3.4 Enforced Disappearances and the Constitutional Crisis of 2024

The practice of enforced disappearance, the detention of persons by state agents followed by the denial of any knowledge of their whereabouts or fate, represents perhaps the most extreme challenge to Article 32's guarantee of the right to life and personal liberty. An enforced disappearance is not merely a violation of the right to personal liberty of the disappeared person; it is also a violation of the rights of the person's family, who are denied the opportunity to know the fate of their loved one and to seek legal redress; and it is a profound violation of the rule of law itself, which requires that the exercise of state power be transparent, accountable, and subject to legal scrutiny.

The practice of enforced disappearance in Bangladesh emerged as a serious human rights concern in the years after 2010, particularly in connection with the activities of the Rapid Action Battalion. The families of disappeared persons, organized through civil society organizations, filed numerous writ petitions in the High Court Division seeking information about the whereabouts of their missing relatives and orders for investigation into the circumstances of their disappearance. The High Court Division's response to these petitions was mixed: in some cases it

issued orders for investigation, but in others it declined to intervene, and the enforcement of its orders in the cases where it did intervene was consistently problematic.

Islam's constitutional law book, published in 2012, does not address enforced disappearance directly as a constitutional problem, reflecting the fact that the practice had not yet achieved the prominence that it would in subsequent years. But his analytical framework for Article 32, with its emphasis on the procedural dimensions of the right to liberty and on the constitutional duty of the state to account for persons in its custody, provides the doctrinal tools for a constitutional analysis of enforced disappearance. A person who is in the custody of state agents, even if that custody is denied, is subject to the state's constitutional duty of care. The state's failure to produce that person before a court, to disclose the legal basis for their detention, or to account for their fate constitutes a continuing violation of Article 32 that the courts are constitutionally obligated to address.

The post-2024 constitutional reform process has identified the legal prohibition of enforced disappearances as one of the priorities for constitutional reform. The Constitutional Reform Commission's report recommended the explicit constitutional prohibition of enforced disappearances, consistent with Bangladesh's obligations under international human rights law (Bangladesh has signed but not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance). This recommendation reflects both the severity of the problem and the recognition that constitutional provision alone will not be sufficient to address it: structural reforms to the law enforcement agencies responsible for the practice, and robust mechanisms of accountability for those who order or carry out disappearances, will be equally necessary.

CHAPTER FOUR: SAFEGUARDS AGAINST ARREST AND DETENTION -- ARTICLES 33 AND 35

4.1 The Constitutional Protections Against Arbitrary Detention

The right to personal liberty protected by Article 32 is operationalized in Bangladesh's Constitution through a set of specific procedural safeguards against arrest and detention contained in Articles 33 and 35. These provisions establish the minimum procedural guarantees that must be observed when the state exercises its power to deprive a person of their liberty, and they reflect the foundational principle that even when the state has legitimate grounds for depriving a person of liberty, it must do so through procedures that are transparent, subject to judicial oversight, and respectful of the dignity and rights of the person detained.

Article 33(1) provides that a person who is arrested shall be informed, as soon as may be, of the grounds for such arrest and shall not be denied the right to consult and be defended by a legal practitioner of his choice. Article 33(2) provides that a person who is arrested and detained in custody shall be produced before the nearest magistrate within twenty-four hours of such arrest (excluding the time necessary for the journey from the place of arrest to the magistrate's court) and shall not be detained in custody beyond the said period without the authority of a magistrate.

These two provisions together constitute the habeas corpus guarantee in its most specific and procedurally detailed form, establishing the legal framework within which the state's power of arrest and detention must operate.

Islam's analysis of Articles 33(1) and 33(2) was meticulous and practically oriented, reflecting his experience as a constitutional litigator who had appeared in habeas corpus applications. He identified several important dimensions of these provisions that had been contested or clarified in the case law. First, the obligation to inform a person of the grounds for arrest must be fulfilled at the time of arrest or as soon as possible thereafter; a post-facto disclosure of grounds, made only when the legality of the detention is challenged in court, is not sufficient to satisfy this constitutional requirement. Second, the right to consult a legal practitioner of one's choice is an absolute right that applies from the moment of arrest; any denial of access to a lawyer, including through the common police practice of holding persons incommunicado, violates this constitutional guarantee. Third, the twenty-four hour rule for production before a magistrate is mandatory, not discretionary; a failure to produce an arrested person before a magistrate within twenty-four hours renders the continued detention unlawful, and the magistrate before whom the person is produced has no authority to authorize continued detention unless the person is charged with a cognizable offense and there are legitimate grounds for detaining them pending trial.

The practical enforcement of these provisions has been chronically problematic in Bangladesh. Police practice has routinely involved detention periods that exceed the constitutional twenty-four hour limit, delays in informing arrested persons of the grounds for their arrest, and obstruction of access to legal counsel. The courts have addressed these practices repeatedly, issuing writs of habeas corpus, awarding compensation to persons whose Article 33 rights have been violated, and issuing guidelines for the proper conduct of arrests and detentions. But compliance with judicial orders in this domain has been inconsistent, and the systemic violations of Articles 33(1) and (2) have persisted despite decades of judicial intervention.

4.2 Preventive Detention: The Constitutional Exception and Its Abuses

The most constitutionally sensitive dimension of Bangladesh's detention law is the regime of preventive detention, authorized by Article 33(4) and (5) of the Constitution. Preventive detention is detention without trial, based not on any past criminal act by the detained person but on a prediction that the person will, if left at liberty, engage in conduct prejudicial to security, public order, or similar interests. The constitutionality of preventive detention as a practice has been debated since its introduction by colonial-era legislation, and the manner in which Bangladesh's Constitution addresses it reflects the difficult balance between the legitimate security interests of the state and the fundamental principle that no person should be deprived of liberty without trial.

Article 33(4) permits the Parliament to make laws providing for preventive detention, subject to the procedural safeguards established in Article 33(5). Those safeguards require that a person detained under a preventive detention law be communicated with the grounds for their detention as soon as may be (though the authority ordering the detention may withhold grounds whose disclosure would be prejudicial to the public interest), be afforded the earliest opportunity of making a representation against the order, and be reviewed by an Advisory Board of three

persons (who must be, or have been, qualified to be judges of the Supreme Court) within seven weeks of the order. If the Advisory Board, having reviewed the case, does not express its opinion that there are sufficient cause for the detention, the person must be released.

Islam's analysis of the preventive detention provisions was among the most searching and critical in his entire constitutional law book. He acknowledged the theoretical legitimacy of preventive detention as a tool for protecting public security in genuinely exceptional circumstances, but he was deeply concerned about the manner in which preventive detention laws had been used in practice: not to address genuine security threats, but to suppress political opposition, to silence journalists and activists, and to maintain control over dissidents and critics. He reviewed the history of preventive detention legislation in Bangladesh, including the Special Powers Act 1974, which had been enacted during the Mujibur Rahman administration and had been used extensively and abusively by successive governments, and identified a consistent pattern of misuse that raised profound constitutional concerns.

The Special Powers Act 1974 has remained one of the most controversial pieces of legislation in Bangladesh's legal history. Despite repeated judicial scrutiny, legislative amendments, and calls for its repeal, the Act has survived through multiple administrations, used by each successive government to detain political opponents, journalists, and critics. The Constitutional Reform Commission's 2025 report identified the repeal or fundamental reform of the Special Powers Act as one of its priority recommendations, arguing that the existing preventive detention framework was fundamentally inconsistent with a constitutional order committed to the rule of law and the protection of fundamental rights.

The Digital Security Act 2018, and its predecessor the Information and Communication Technology Act 2006, represented an updated version of the preventive detention approach in the digital age, providing law enforcement with broad powers to arrest and detain persons for online expression deemed harmful to national security, public order, or the dignity of the state. These Acts generated massive controversy and were used extensively by the Hasina administration against journalists, bloggers, activists, and political critics. Their use against students and activists during the July 2024 uprising was one of the immediate triggers for the escalation of protests that ultimately led to the fall of the government. The interim government that came to power in August 2024 moved to repeal the Digital Security Act and replace it with the Cyber Security Act, though civil society critics argued that the new Act retained many of the problematic features of its predecessor.

4.3 Double Jeopardy and Self-Incrimination: Article 35 and the Right to a Fair Trial

Article 35 of Bangladesh's Constitution contains a cluster of protections that together constitute the constitutional framework for a fair criminal process. Article 35(1) prohibits retrospective criminal laws, providing that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. Article 35(2) prohibits double jeopardy, providing that no person shall be prosecuted and punished for the same offence more than once. Article 35(3) protects against self-incrimination, providing that a person accused of any offence shall not be compelled

to be a witness against himself. Article 35(4) prohibits torture and cruel, inhuman, or degrading punishment, providing that no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

Islam's analysis of Article 35(4) deserves particular attention because it engages with one of the most disturbing realities of Bangladesh's criminal justice system: the systematic use of torture, particularly by law enforcement agencies in the interrogation of suspects. The constitutional prohibition of torture is absolute and admits of no exception; unlike the general rights provisions, which are subject to limitation clauses, Article 35(4) states its prohibition without any qualification. And yet the evidence that torture is regularly practiced in Bangladesh's places of detention is overwhelming and well-documented, having been reported consistently by the United Nations human rights system, by Bangladesh's National Human Rights Commission, by civil society organizations, and by the courts themselves in cases where torture allegations have been raised.

Islam approached this issue with analytical rigor and moral clarity. He argued that the absolute constitutional prohibition of torture meant that any evidence obtained through torture was constitutionally inadmissible, not merely as a matter of evidentiary reliability (tortured confessions are notoriously unreliable) but as a matter of constitutional principle: to admit evidence obtained through torture into criminal proceedings is to use the fruits of a constitutional violation, to allow the state to benefit from its own wrongdoing. He also argued that the constitutional prohibition of torture created an affirmative state duty not merely to refrain from torture but to take positive steps to prevent it, including through the establishment of effective investigative and prosecutorial mechanisms to hold those who order or commit torture accountable.

The complete non-implementation of this aspect of constitutional law has been one of the most troubling failures of Bangladesh's constitutional order. The practice of torture in custody has continued unabated despite the constitutional prohibition, despite judicial condemnations, and despite international human rights obligations. The accountability of those who commit torture has been virtually nonexistent. The Constitutional Reform Commission's 2025 report identified the investigation and prosecution of torture as a priority reform area, recommending the establishment of an independent oversight mechanism for places of detention, the ratification of the Optional Protocol to the Convention Against Torture (OPCAT), and the reform of evidentiary rules to provide explicitly for the exclusion of evidence obtained through torture.

CHAPTER FIVE: FREEDOM OF MOVEMENT, ASSEMBLY, ASSOCIATION, AND PROFESSION -- ARTICLES 36 TO 40

5.1 The Cluster of Liberty Rights: Movement, Assembly, Association, Profession

Articles 36 through 40 of Bangladesh's Constitution protect a cluster of liberty rights that together constitute the constitutional framework for a free and open civil society: the freedom to move freely throughout the territory of Bangladesh and to reside and settle in any part of it

(Article 36), the freedom of assembly (Article 37), the freedom of association (Article 38), the freedom of thought, conscience, and speech (Article 39), and the freedom of profession, occupation, trade, or business (Article 40). These rights are the constitutional infrastructure of a liberal democracy: they are the rights without which meaningful political participation, civil society organization, and economic freedom are impossible.

Islam's analysis of these provisions was notable for its emphasis on the systemic connections between them. He argued that the liberty rights of Articles 36 to 40 should be understood not merely as individual protections but as elements of a constitutional system of ordered liberty, in which each right supports and depends on the others. Freedom of assembly is meaningful only if citizens are free to move to the place of assembly (Article 36) and to form the associations that call for and organize assemblies (Article 38). Freedom of association is meaningful only if citizens are free to express and publish the views and values that animate their associations (Article 39). And all of these freedoms are more robustly protected when citizens have economic independence, which requires the freedom to choose their occupation or profession (Article 40) and to earn a livelihood without arbitrary state interference.

This systemic understanding of the liberty rights reflects a sophisticated constitutional philosophy that goes beyond the individual rights-maximization approach that dominates much constitutional litigation. It reflects an understanding, drawn from the republican tradition in political philosophy, that freedom is not merely an individual attribute but a systemic condition: a condition that requires not merely the absence of direct coercion in individual cases but the existence of constitutional and institutional structures that make it impossible for any person or group to dominate the liberty of others. The constitutional protection of freedom of movement, assembly, association, and expression is not merely a protection of the individual but a protection of the conditions that make genuine democratic self-government possible.

5.2 Freedom of Assembly and the Right to Protest

Freedom of assembly (Article 37) is one of the most politically consequential of the fundamental rights because it is the right that enables citizens to collectively express their political views, to demonstrate in support of or against government policies, and to engage in the forms of mass political action that are the lifeblood of a functioning democracy. The history of Bangladesh is a history, in significant part, of mass political assembly: the Language Movement demonstrations of February 1952, the Non-Cooperation Movement of March 1971, the mass protests that brought down General Ershad in 1990, the Shahbagh protests of 2013, and above all the July 2024 uprising that ended the Hasina government. Each of these moments of mass political action was an exercise of the freedom of assembly in its most fundamental and politically significant sense.

Article 37 protects the right of citizens to assemble and to participate in public meetings and processions, subject to reasonable restrictions imposed by law in the interests of public order or public health. Islam's analysis of Article 37 focused on two critical questions: what counts as a "reasonable restriction" under the limitation clause, and who has the authority to determine reasonableness. He argued, drawing on comparative constitutional jurisprudence, that a restriction on the freedom of assembly is "reasonable" only if it is imposed for genuine public

order or public health grounds (not for political reasons), if it is proportionate to the public order or health objective it pursues (a complete prohibition on a lawful demonstration cannot be justified by speculative public order concerns), and if it allows the maximum possible exercise of the right consistent with the legitimate objective.

The application of these principles to the police response to the July 2024 protests raises the most serious constitutional questions. The use of live ammunition against peaceful student protesters, the imposition of indefinite curfews that in effect prohibited all public assembly, and the deployment of the military to suppress demonstrations were not "reasonable restrictions" on the freedom of assembly in any constitutional sense. They were constitutional violations of the most fundamental kind: the use of lethal force by the state against citizens exercising their most basic democratic rights. The Constitutional Reform Commission's analysis of these events identified the police and military response to the July 2024 protests as a case study in the systematic violation of fundamental rights, and its recommendations for police reform and accountability mechanisms are directly responsive to these violations.

5.3 Freedom of Association and the Constitutional Status of Political Parties

Freedom of association (Article 38) is particularly important in its constitutional relationship to political parties, trade unions, and civil society organizations. Political parties are the principal vehicles of democratic participation in a Westminster-style parliamentary system, and the constitutional protection of freedom of association extends to the right to form and participate in political parties. The question of whether, and to what extent, the state may constitutionally restrict or regulate political parties is one of the most important and contested questions in comparative constitutional law.

Bangladesh's Constitution does not contain an explicit provision on political parties, but Article 38 has been interpreted to protect the right of citizens to form and join political parties as a constitutional freedom. The question of whether this protection extends to parties that advocate for the replacement of the constitutional order, or that pursue their political objectives through anti-democratic or violent means, is a genuinely difficult one. Islam's analysis of this question, drawing on the doctrine of "militant democracy" developed in the German constitutional tradition following the Weimar Republic's experience, suggested that democracy may constitutionally protect itself against those who would use democratic freedoms to destroy democracy itself. A constitutional order is not constitutionally obligated to tolerate political parties that openly seek to subvert it.

But this principle must be applied with extreme caution, because the power to determine which political organizations are "anti-democratic" or "dangerous" is easily abused by incumbent governments to suppress legitimate political opposition. The history of party bans in South Asia, including the various attempts in Bangladesh to suppress Jamaat-e-Islami and other parties on constitutional grounds, illustrates the risks of the militant democracy doctrine in environments where the rule of law is fragile and where the courts may not be sufficiently independent to provide a reliable check on government overreach.

5.4 Freedom of Expression: The Constitutional Heartland of Democratic Liberty

Freedom of thought, conscience, and speech (Article 39) is perhaps the most philosophically rich and practically consequential of all the fundamental rights, and Islam's treatment of it in his constitutional law book is among the most detailed and sophisticated in his entire work. He approached Article 39 with both a deep commitment to the value of free expression and a clear-eyed recognition of the legitimate interests that may sometimes justify its restriction.

Article 39(1) guarantees freedom of thought and conscience. Article 39(2) guarantees freedom of speech and expression and freedom of the press, subject to reasonable restrictions imposed by law in the interests of the security of the state, friendly relations with foreign states, public order, decency, or morality, or in relation to contempt of court, defamation, or incitement to an offense. This list of permissible grounds for restriction is extensive, and its breadth has generated significant controversy about the extent to which it allows governments to suppress speech in ways that are inconsistent with a genuine commitment to free expression.

Islam's analysis of Article 39 drew on the rich philosophical tradition of free speech theory, including most prominently John Stuart Mill's arguments in "On Liberty." Mill's marketplace of ideas argument holds that truth is most likely to emerge from a process of open debate in which all ideas, however unpopular, however offensive, however seemingly false, are permitted to be expressed and subjected to public criticism. The suppression of speech, on this view, is wrong not merely because it violates individual autonomy but because it impoverishes the epistemic process through which society discovers truth and corrects error. Even false speech has value, because the process of refuting it strengthens the case for the truth.

Beyond Mill's epistemic argument, Islam also engaged with the democratic self-governance argument for free expression, associated most prominently with Alexander Meiklejohn's constitutional theory. On this view, the primary constitutional importance of free speech is its connection to democratic self-government: citizens must be free to discuss, debate, and criticize the policies and actions of their government if they are to exercise their democratic rights meaningfully. A government that suppresses speech critical of its policies is a government that has insulated itself from democratic accountability, that has replaced the sovereignty of the people with the sovereignty of the incumbent power.

The contemporary application of Article 39 jurisprudence in Bangladesh has been dominated by the controversy over the Digital Security Act 2018, which created sweeping criminal offenses for online expression including the publication of material deemed to be "propaganda" against the government, the Liberation War, the Proclamation of Independence, or the national anthem; the publication of material deemed to spread "rumour, misinformation, or false information"; and the publication of material deemed to create "enmity, hatred, or hostility" among different groups. Critics argued, powerfully and correctly, that these provisions were so broadly drafted that they could be used to criminalize virtually any critical commentary about the government or about politically sensitive subjects, and that their application in practice had precisely this effect.

The numbers are stark: hundreds of cases were filed under the Digital Security Act against journalists, bloggers, students, and ordinary citizens for online expression, many of them resulting in arrest and prolonged pre-trial detention. The chilling effect on free expression in Bangladesh was severe and well-documented. Islam's constitutional framework for Article 39

analysis provided the intellectual tools for challenging the Digital Security Act's constitutionality, and several writ petitions were filed challenging specific provisions or specific prosecutions. The Constitutional Reform Commission's recommendation for the development of a freedom of expression framework consistent with international human rights standards represents a systematic attempt to construct the regulatory framework for online expression that Bangladesh's Constitution requires but that has consistently eluded the country's legislative process.

CHAPTER SIX: FREEDOM OF RELIGION AND THE CONSTITUTIONAL FRAMEWORK OF PLURALISM -- ARTICLE 41

6.1 The Constitutional Protection of Religious Freedom

Article 41 of Bangladesh's Constitution guarantees freedom of religion. It provides that every citizen has the right to profess, practice, or propagate any religion; that every religious community or denomination has the right to establish, maintain, and manage its religious institutions; and that no person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious ceremony or worship, if that instruction, ceremony, or worship relates to a religion other than his own.

This provision reflects the secular constitutional vision of the 1972 Constitution: a commitment to protecting the freedom of each individual and each religious community to practice their faith without state interference, combined with a principle of equal treatment that precludes the state from favoring any one religious tradition over others. Freedom of religion, on this constitutional understanding, is not merely a freedom to worship privately (though it includes that); it is a freedom to organize one's life, individually and collectively, according to one's deepest convictions about truth, morality, and the meaning of human existence.

Islam's analysis of Article 41 was shaped by his awareness of the particular sensitivities of religious freedom in Bangladesh's context. Bangladesh is a society in which religion is deeply woven into the social fabric, in which the religious community (umma, for the Muslim majority; the temple community for Hindus; the church community for Christians; the sangha for Buddhists) provides not merely a framework for private worship but a comprehensive system of social support, cultural identity, and moral authority. Any constitutional approach to religious freedom in Bangladesh must grapple with this social reality: protecting religious freedom is not merely a matter of preventing government interference with private worship but of maintaining the conditions within which diverse religious communities can flourish without being dominated by the majority or suppressed by the state.

The most difficult constitutional question in the domain of religious freedom is the relationship between the individual's freedom of religion and the authority of the religious community to which the individual belongs. When a religious community claims the right to enforce its own rules on its members, and when those rules conflict with the constitutional rights of individual members, which constitutional principle prevails? This tension is most acute in the context of

minority communities within larger religious communities: women within predominantly patriarchal religious traditions, members of heterodox sects within majority religions, and converts who have chosen to leave one religious community for another.

Islam's analysis of these tensions was careful but not fully satisfying, reflecting the genuine difficulty of the constitutional questions involved. He recognized that the freedom of religious communities to manage their own affairs was constitutionally protected, but he also recognized that this protection could not be absolute, that it could not extend to practices that violated the fundamental rights of individual community members, and that the state had a constitutional responsibility to protect the constitutional rights of individuals even within the domain of religious community governance.

6.2 Religious Minority Rights and Constitutional Pluralism

The protection of religious minorities is one of the most important practical dimensions of Article 41's guarantee of religious freedom, and it is a domain in which Bangladesh's constitutional record has been deeply troubled. The Hindu minority, which constituted approximately 28% of the population at independence in 1971 but has declined to approximately 8% today (partly through emigration driven by communal violence and religious persecution), has faced systematic patterns of discrimination, displacement, and property dispossession throughout Bangladesh's constitutional history.

The Vested Property Act (originally the Enemy Property Act 1965, renamed and amended several times), which provided for the confiscation of property belonging to persons who had migrated to India, was used systematically to dispossess Hindu families of their ancestral lands, often through fraudulent claims that the property owners had left Bangladesh. The repeal of this Act and the restoration of confiscated property became one of the most prominent constitutional demands of Bangladesh's Hindu community, and it generated extensive constitutional litigation and political debate. The Vested Property Return Act 2001 and its subsequent amendments represented a partial legislative response to this demand, but its implementation was chronically inadequate, and large amounts of property confiscated under the original Act have never been restored to their rightful owners.

Islam's treatment of minority rights in his constitutional law book was notable for its engagement with both the constitutional and the practical dimensions of the issue. He identified the protection of religious minorities as a constitutional imperative, grounded not only in Article 41's guarantee of religious freedom but also in Articles 27 and 28's guarantees of equality and non-discrimination. He argued that the state's constitutional obligations toward minorities extended beyond the mere prohibition of direct discrimination to the positive duty to take measures to protect minority communities from communal violence and to ensure their effective participation in the civic life of the republic.

The recent years have seen disturbing episodes of communal violence against Hindu minorities in Bangladesh, including attacks on temples and property following the publication of images on social media deemed offensive to Muslim sensibilities. These events have generated renewed attention to the adequacy of the constitutional and legal frameworks for the protection of

minorities, and the Constitutional Reform Commission's 2025 report identified the strengthening of minority protections, both through constitutional reform and through the reform of criminal law enforcement, as a priority recommendation. The report's proposal for the explicit constitutional recognition of pluralism as a foundational principle, replacing the abolished principle of secularism with a more inclusive concept of pluralism that explicitly recognizes and protects the diversity of religious, cultural, and ethnic communities, represents a significant constitutional rethinking of the framework for minority protection.

CHAPTER SEVEN: PROPERTY RIGHTS, CULTURAL RIGHTS, AND PRIVACY -- ARTICLES 42 AND 43

7.1 The Right to Property: History, Limitation, and Contemporary Controversy

Article 42 of Bangladesh's Constitution guarantees the right of every citizen to acquire, hold, transfer, or otherwise dispose of property, and provides that no property shall be compulsorily acquired, nationalized, or requisitioned save by authority of law which provides for compensation and either fixes the amount of the compensation or specifies the principles on which and the manner in which the compensation is to be determined.

The right to property has had a particularly complex and controversial history in Bangladesh's constitutional development, reflecting the tensions between different constitutional values: the commitment to individual property rights as an aspect of personal freedom, the socialist principles of the 1972 Constitution that justified significant state intervention in property relations, and the competing claims of social justice and economic development that require the state to be able to acquire private property for public purposes without being paralyzed by excessive compensation obligations.

The original 1972 Constitution contained strong property rights protections, but these were significantly modified by the fourth amendment of 1975, which in its socialist phase authorized extensive nationalization of private enterprises. The subsequent restoration of private property rights through constitutional amendments and legislative changes reflected the shift toward a more market-oriented economic policy that Bangladesh adopted from the 1980s onward. By the time Islam published his constitutional law book, the property rights framework was significantly closer to the original 1972 model than to the socialist framework of the fourth amendment period.

Islam's analysis of Article 42 was notable for its engagement with the concept of "law" as a limitation on the state's power of compulsory acquisition. He argued, in a manner consistent with his broader approach to constitutional interpretation, that "law" in Article 42 must mean substantive law that satisfies constitutional requirements, not merely any formal legislative enactment. A law that authorized compulsory acquisition without adequate compensation, or that was enacted for purposes other than genuine public interest, would not constitute valid "law" within the meaning of Article 42, even if it had been enacted by the Parliament through the correct procedures.

This substantive interpretation of the property rights guarantee has important implications for a range of contemporary controversies about land acquisition in Bangladesh. Large infrastructure projects, special economic zones, and urban development schemes have all involved significant displacement of communities through compulsory land acquisition, often with inadequate compensation and without meaningful consultation with affected communities. The constitutional framework of Article 42, properly understood, requires not merely the formal provision of compensation but substantive justice in the acquisition process: fair valuation of acquired property, meaningful participation of affected communities in the decision-making process, and adequate alternative arrangements for those displaced.

7.2 The Right to Privacy: An Emerging Constitutional Right

Article 43 of Bangladesh's Constitution protects the right to privacy of home and correspondence, providing that every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the state, public order, public morality, or public health, to be secured in his home against entry, search, and seizure, and to the privacy of his correspondence and other means of communication.

Islam's analysis of Article 43 noted that the provision's explicit textual protection was relatively narrow, confined to the privacy of home and correspondence. But he argued that Article 43, read in conjunction with Article 32's right to life and personal liberty and the other fundamental rights provisions, supported a broader constitutional right to privacy that extended beyond the specific protections of Article 43 to encompass a general right to informational privacy, personal autonomy, and freedom from intrusive surveillance by state authorities.

This expansive interpretation of the constitutional right to privacy has become enormously important in the digital age, as the technologies available for state surveillance have expanded dramatically beyond anything that the framers of the 1972 Constitution could have imagined. The mass surveillance capabilities available to modern states, including the interception of telecommunications, the monitoring of social media activity, the deployment of facial recognition technology, and the aggregation of data from multiple sources to build comprehensive profiles of individual citizens, raise constitutional questions that go far beyond the explicit protections of Article 43. Whether these surveillance practices are constitutionally permissible, and under what conditions, is one of the most important constitutional questions of the twenty-first century.

Bangladesh's experience with digital surveillance has been extensive and troubling. The use of mobile phone data and social media monitoring to track the activities of political opponents, journalists, and activists was a prominent feature of the Hasina administration's approach to managing political dissent. The revelations about the use of Israeli spyware (Pegasus) to surveil the phones of journalists and civil society activists added an international dimension to these domestic surveillance concerns. The Constitutional Reform Commission's 2025 report identified the strengthening of privacy rights in the digital age as a priority constitutional concern, and its recommendation for an explicit constitutional right to informational privacy represents a significant development in the constitutional framework for privacy protection.

CHAPTER EIGHT: THE WRIT JURISDICTION OF THE HIGH COURT DIVISION -- THE CONSTITUTIONAL ENGINE OF RIGHTS ENFORCEMENT

8.1 The Architecture of Constitutional Remedies

The most brilliant section of Part Three of Bangladesh's Constitution, from the perspective of constitutional design, is not any of the specific rights provisions discussed in the preceding chapters. It is Article 44, which gives every person the right to move the High Court Division for the enforcement of the rights conferred by Part Three, and Article 102, which gives the High Court Division the power to issue directions, orders, or writs for the enforcement of those rights. Together, Articles 44 and 102 constitute the mechanism through which the constitutional promises of Part Three are converted into justiciable rights, into rights that can be enforced by a court against a state that violates them.

The significance of this constitutional design cannot be overstated. Rights without remedies are, in the memorable phrase of the Roman jurist Ulpian as reformulated by Bracton and later by Coke and Blackstone, not rights at all but mere aspirations. The constitutional guarantee of a remedy before a court of law is what distinguishes a genuine constitutional right from a mere declaration of principle. And the writ jurisdiction of the High Court Division, with its power to issue the full range of common law prerogative writs including habeas corpus, mandamus, certiorari, prohibition, and quo warranto, is one of the most powerful legal mechanisms ever devised for the protection of individual rights against state abuse.

Islam devoted more analytical attention to the writ jurisdiction of the High Court Division than to any other single subject in his constitutional law book, reflecting his conviction that the practical effectiveness of Bangladesh's fundamental rights guarantee depended more than anything else on the manner in which the courts exercised their writ jurisdiction. A generous and courageous interpretation of the writ power could transform Article 102 into the vehicle for a comprehensive system of constitutional rights protection. A timid and formalistic interpretation could reduce it to an occasional corrective for the most egregious abuses of state power, leaving the fundamental structure of rights violations untouched.

8.2 The Five Writs: Habeas Corpus, Mandamus, Certiorari, Prohibition, and Quo Warranto

The five writs available under Article 102 are among the oldest and most venerable tools of legal protection in the common law tradition, with histories stretching back to medieval England and forward through centuries of development in English, American, and South Asian constitutional practice. Understanding each of them, their proper scope and the conditions for their issuance, is essential to understanding how the writ jurisdiction operates in practice.

Habeas corpus, the "great writ of liberty" in the classical description, is a writ that commands the body: it requires a person who has detained another to produce that person before the court and to justify the legal basis for the detention. The writ of habeas corpus is the most direct and

powerful constitutional remedy against unlawful detention, and it has been described as the cornerstone of the common law's protection of personal liberty. In Bangladesh's constitutional framework, the High Court Division's power to issue habeas corpus under Article 102(2)(b)(i) is the primary legal mechanism for enforcing Article 32's right to personal liberty against arbitrary detention.

Islam's analysis of the habeas corpus jurisdiction was particularly detailed and practically focused. He addressed a series of questions that have been contested in Bangladesh's courts: Who has standing to file a habeas corpus petition? (Anyone, including persons other than the detained person, such as family members or concerned citizens.) Against whom can habeas corpus issue? (Any person having custody of the detained individual, including private individuals in addition to state officials, though the most common respondents are law enforcement agencies.) What is the burden of proof? (Once the petitioner establishes a prima facie case of detention, the burden shifts to the respondent to justify the legality of the detention.) What remedies can the court grant? (Not merely the release of the detained person, but also compensation for unlawful detention and orders for investigation of the circumstances of the detention.)

These analytical points, developed by Islam through engagement with the case law of Bangladesh and of India and the United Kingdom, have been confirmed and developed by Bangladesh's courts in subsequent decisions. The Appellate Division's jurisprudence on habeas corpus has progressively strengthened the procedural and substantive requirements for valid detention, making it more difficult for the state to maintain unlawful detentions and more effective for the courts to provide relief in cases of rights violations.

Mandamus, the second of the five writs, is a writ that commands: it orders a public authority to perform a legal duty that it has failed to perform. The writ of mandamus is the primary constitutional remedy for failures of administrative duty, for cases where a government official or agency has the legal obligation to act but has refused or failed to do so. It is a remedy of enormous practical importance in Bangladesh, where the failure of public officials to perform their statutory duties is a chronic problem that affects the delivery of public services, the enforcement of environmental and labour regulations, and the investigation and prosecution of corruption and other offenses.

Islam's analysis of mandamus emphasized its importance as a tool for compelling administrative action as much as for checking administrative excess. The courts' power to issue mandamus is particularly important in ensuring that the directive principles of state policy in Part Two of the Constitution, which create obligations on the state to provide social services, promote public welfare, and develop national institutions, are not treated as purely advisory but are given some degree of legal force through the courts' willingness to order state agencies to take steps toward fulfilling their constitutional obligations. This approach, which anticipates the later development of "progressive realization" jurisprudence in relation to socioeconomic rights, was an important contribution of Islam's constitutional analysis.

Certiorari, the third writ, is a writ that examines: it requires a lower court or tribunal to transmit the record of its proceedings to the High Court Division for review of the legality of its decision.

Certiorari is the primary writ for the judicial review of administrative and quasi-judicial decisions, and it is the mechanism through which the High Court Division exercises its supervisory jurisdiction over inferior courts and administrative tribunals. The grounds for issuing certiorari have been developed extensively through case law, and generally include want of jurisdiction, excess of jurisdiction, error of law on the face of the record, violation of the principles of natural justice, and bias or bad faith.

Islam's analysis of certiorari was notable for its engagement with the evolving relationship between certiorari and the principle of natural justice, particularly the rule *audi alteram partem* (hear the other side) and the rule against bias (*nemo iudex in causa sua*). He argued that the requirements of natural justice were not merely procedural formalities but substantive constitutional requirements: any administrative decision that deprived a person of a significant interest without giving them notice and an opportunity to be heard was not merely procedurally defective but constitutionally invalid, because it violated the principle of the rule of law that requires state power to be exercised through fair procedures.

Prohibition, the fourth writ, is a preventive writ: it prohibits a lower court or tribunal from proceeding further in a matter over which it has no jurisdiction, or from exercising jurisdiction in an illegal manner. The writ of prohibition is complementary to certiorari: while certiorari corrects completed proceedings that were conducted without jurisdiction or in violation of legal requirements, prohibition prevents such proceedings from continuing. It is particularly important in cases where the harm from unlawful proceedings cannot be adequately remedied after the fact.

Quo warrant, the fifth writ, is a writ that challenges the legal authority of a person to hold a public office. It requires the office holder to show the legal basis of their claim to the office, and the court can issue an order removing them from the office if they cannot demonstrate a valid legal basis for holding it. The writ of quo warrant is an important constitutional mechanism for ensuring that public offices are held by persons who are constitutionally and legally qualified, and for challenging appointments that have been made in violation of constitutional requirements.

8.3 The Expansion of Locus Standi: Who Can File a Writ Petition?

One of the most significant jurisprudential developments in Bangladesh's writ jurisdiction, and one that Islam analyzed with particular enthusiasm, has been the progressive relaxation of the traditional standing requirements for filing writ petitions. The traditional common law rule on standing required that a person seeking a prerogative writ must have a personal, specific, and direct interest in the matter: they must show that their own rights have been violated or threatened, not merely that a legal wrong has been committed that affects the public generally.

This strict standing requirement made sense in the context of purely private litigation, where courts adjudicate between the competing claims of identifiable parties who have been directly affected by a legal dispute. But it was poorly suited to the constitutional context of fundamental rights protection, where violations of constitutional rights by public authorities often affect not identifiable individuals but diffuse groups of citizens, where the individuals most directly affected may be in no position to seek judicial protection (being detained, illiterate,

impoverished, or politically powerless), and where the public interest in constitutional compliance transcends the interests of any individual petitioner.

The response of South Asian constitutional courts to this problem has been to develop the concept of public interest litigation (PIL), which relaxes the traditional standing requirements and allows any person acting in the public interest to file a petition challenging a public law violation even if they are not personally and directly affected by it. The development of PIL in India began in the late 1970s and accelerated through the 1980s, driven in part by the post-Emergency desire of the Indian Supreme Court to re-establish its constitutional role as the protector of fundamental rights, and in part by the increasing sophistication of civil society organizations and activist lawyers who developed the legal arguments needed to justify the expanded jurisdiction.

Bangladesh's High Court Division began developing its own PIL jurisprudence somewhat later, but by the time of Islam's 2012 edition there was a substantial body of Bangladeshi PIL case law that he was able to analyze and assess. The High Court Division had issued PIL decisions on subjects ranging from environmental protection and river pollution to custodial torture and the rights of children working in hazardous conditions, demonstrating the enormous breadth of the constitutional questions that the expanded standing doctrine made accessible to judicial resolution.

CHAPTER NINE: PUBLIC INTEREST LITIGATION AND THE TRANSFORMATION OF CONSTITUTIONAL ADJUDICATION

9.1 The Origins and Philosophy of Public Interest Litigation

Public interest litigation represents one of the most significant constitutional innovations of the late twentieth century in South Asia, and its development in Bangladesh, shaped substantially by the analytical framework that Islam provided, has transformed the relationship between the courts and the political institutions of the state in ways that continue to unfold and to generate controversy.

The philosophical basis of PIL rests on a distinctive understanding of the role of the judiciary in a constitutional democracy. The traditional understanding, inherited from the common law tradition, is that courts are institutions for the resolution of private disputes: they adjudicate between competing parties who have conflicting claims of right, and they apply pre-existing legal rules to the facts of the particular case. On this understanding, the court's role is fundamentally backward-looking and reactive: it responds to disputes that arise in the course of private and public life, it applies established rules, and it maintains its institutional legitimacy by adhering to the boundaries of its established jurisdiction.

PIL challenges this traditional self-understanding of the judiciary by assigning courts a more active and forward-looking role in the constitutional order. On the PIL model, the courts are not merely resolvers of disputes but guardians of the constitutional order, institutions with the

authority and the responsibility to take proactive steps to protect constitutional rights and to enforce constitutional obligations even when no identifiable individual has brought a specific dispute before the court. This understanding of the judicial role draws on the concept of constitutional democracy: the idea that the constitution is not merely a framework for private rights adjudication but a fundamental charter of the political community that establishes certain non-negotiable standards of governance to which all state actors, including the legislature and the executive, are subject.

Islam was cautiously enthusiastic about the development of PIL in Bangladesh. He recognized its potential to extend constitutional rights protection to the most vulnerable and marginalized members of society who lacked the resources and social connections to initiate conventional rights litigation. He acknowledged its importance as a mechanism for enforcing constitutional obligations that the political branches had failed to perform, and for holding the state accountable for the gap between its constitutional promises and its actual practice. But he was also attentive to the risks: the risk of judicial overreach, of courts substituting their policy judgments for those of democratically elected institutions; the risk of politicization, of PIL being used not to protect genuine constitutional interests but to advance partisan political agendas through the courts; and the risk of institutional credibility, of PIL generating so much judicial involvement in policy matters that the courts lose the institutional independence that is their most important constitutional asset.

These concerns, which Islam identified in his 2012 edition, have become increasingly urgent in the period since then. The development of PIL in Bangladesh has generated a significant body of case law, some of it representing genuine constitutional progress and some of it representing the risks that Islam identified. The most significant PIL decisions, including the Buriganga River environmental cases, the cases on the rights of child workers, the cases on the administration of elections, and the cases on the accountability of public officials, represent the best of what PIL can achieve: the enforcement of clear constitutional obligations that political institutions have failed to honor, through judicial intervention that is measured, focused, and respectful of democratic decision-making. The more problematic PIL decisions, in which courts have issued broad and vague orders on complex policy matters without adequate institutional competence to evaluate the consequences of their interventions, illustrate the risks that accompany the expansion of judicial power into the legislative and executive domains.

9.2 Landmark PIL Decisions and Their Constitutional Significance

The jurisprudential landscape of public interest litigation in Bangladesh is populated by a series of landmark decisions that together tell the story of the High Court Division's engagement with the most difficult constitutional challenges of the last three decades. Examining these decisions in some detail is essential to understanding both the achievements and the limitations of PIL as a mechanism for constitutional rights protection.

The Bangladesh Legal Aid and Services Trust (BLAST) has been one of the most important institutional engines of PIL in Bangladesh, filing cases on behalf of marginalized individuals and communities who lack the resources to pursue conventional litigation. Among the most significant of BLAST's PIL cases is *Bangladesh v. Government of Bangladesh* (the Acid Attack

case), in which the High Court Division issued orders for the enforcement of the Acid Control Act 2002 and the Acid Crime Prevention Act 2002, compelling the government to take effective measures to prevent acid attacks, which had reached epidemic proportions in Bangladesh particularly in the early 2000s, and to provide adequate support to the survivors of acid attacks. This case illustrates PIL at its most effective: a clear constitutional and legislative mandate for state action, a specific and identifiable harm, and a court order that is sufficiently concrete to be enforceable.

The environmental PIL cases, including the Buriganga River pollution cases and the cases concerning the Hatirjheel Lake development project in Dhaka, represent a more complex PIL scenario in which courts have been called upon to balance environmental constitutional rights against competing developmental interests. The High Court Division's orders in these cases, requiring the enforcement of environmental regulations against industries and construction projects, have had significant practical impact but have also generated controversy about the appropriate scope of judicial involvement in urban planning and industrial policy.

The election commission PIL cases, in which the High Court Division issued orders requiring the Election Commission to implement various electoral reforms and to ensure the neutrality of its administration, represent PIL's most politically sensitive dimension: the use of constitutional adjudication to constrain the conduct of electoral processes. Islam's analysis of these cases was cautious, reflecting his awareness that the intersection of PIL and electoral politics was an area of maximum constitutional sensitivity, where the risk of politicization was highest and where the court's institutional legitimacy was most directly at stake.

9.3 The Relationship Between PIL and Democracy: A Constitutional Tension

The development of PIL raises a fundamental constitutional tension that Islam identified but did not fully resolve, and that continues to generate debate in Bangladesh and across the South Asian constitutional world: the tension between judicial protection of constitutional rights and the principle of democratic self-governance.

In a democratic constitutional order, the primary mechanism for making collective decisions about public policy is the legislative process: the will of the people, expressed through free and fair elections, is translated into law and policy through the representative institutions of government. The judiciary's role is to interpret and apply that law, not to make it. When PIL decisions expand judicial involvement in public policy, moving courts from the role of law-interpreters to the role of law-makers, they challenge this fundamental division of constitutional functions. And when PIL decisions are perceived to be driven not by neutral constitutional principle but by the political preferences of individual judges, they undermine the institutional legitimacy of the judicial process.

These concerns have particular force in the Bangladeshi context, where the political independence of the judiciary has historically been fragile and where the use of judicial processes for political purposes, both by governments seeking to suppress opposition and by opposition forces seeking to delegitimize governments, has been a recurring feature of the constitutional landscape. The challenge for Bangladesh's constitutional development is to

cultivate a PIL jurisprudence that is genuinely principled: rooted in clear constitutional obligations, disciplined in its scope, attentive to the limits of judicial institutional competence, and resistant to political co-optation from any direction.

Islam's analytical framework for PIL, with its emphasis on clear constitutional obligations, its caution about judicial policy-making, and its concern for institutional credibility, provides the most useful starting point for meeting this challenge. The subsequent development of PIL jurisprudence will need to build on this framework while developing more sophisticated doctrines for managing the boundary between constitutional adjudication and democratic policy-making.

CHAPTER TEN: SOCIOECONOMIC RIGHTS AND THE CONSTITUTIONAL PROMISE OF WELFARE -- BEYOND PART THREE

10.1 The Doctrinal Divide: Justiciable Rights and Directive Principles

One of the most fundamental structural features of Bangladesh's constitutional framework for rights protection is the division between the justiciable fundamental rights of Part Three and the non-justiciable fundamental principles of state policy in Part Two. Part Two of the Constitution, which runs from Article 8 to Article 25, establishes a comprehensive framework of directive principles that the state is constitutionally directed to pursue in its legislative and policy activities. These principles include the promotion of local government institutions (Article 9), the emancipation of peasants and workers from all forms of exploitation (Article 14), universal and compulsory primary education (Article 17), the improvement of public health and the raising of the level of nutrition (Article 18), the equal rights of women with men in all spheres of national life (Article 19(1)), the participation of women in all spheres of national life (Article 19(2)), the separation of the judiciary from the executive (Article 22), and the promotion of international peace, security, and solidarity (Articles 25 and following).

These directive principles are explicitly stated, in Article 8(2), to be fundamental to the governance of Bangladesh but not judicially enforceable, not cognizable by any court, even though they are principles of the constitution. This non-justiciability clause reflects the constitutional framers' recognition that the social and economic obligations it imposes on the state require resources, planning, and time for their implementation, and that it would be inappropriate to subject the government's compliance with those obligations to the coercive authority of the courts in the same way that the government's compliance with civil and political rights is subject to judicial enforcement.

Islam engaged with the doctrinal divide between Part Two and Part Three in a way that was thoughtful and analytically nuanced. He did not simply accept the non-justiciability of directive principles as a fixed and permanent feature of Bangladesh's constitutional landscape. Instead, he argued, drawing on the evolution of Indian constitutional jurisprudence, that the relationship between directive principles and fundamental rights should be understood as one of mutual reinforcement rather than hierarchical subordination: the directive principles help to define the

substantive content and social purpose of the fundamental rights, while the fundamental rights provide the procedural and institutional framework for the progressive realization of the social objectives expressed in the directive principles.

This interpretive approach allowed Islam to develop what might be described as an indirect justiciability argument for socioeconomic rights: even if the directive principles themselves are not directly enforceable in court, the courts can use them as interpretive guides in determining the scope and content of the justiciable fundamental rights, and can thereby extend the practical reach of constitutional rights protection beyond the formal boundary between Parts Two and Three.

10.2 The Indian Experience: The Transformation of Article 21

The most important comparative precedent for understanding how socioeconomic rights can be developed through constitutional adjudication without explicit textual authority is the transformation of Article 21 of the Indian Constitution by the Indian Supreme Court over a period of several decades.

Article 21 of the Indian Constitution provides, in language almost identical to Article 32 of Bangladesh's Constitution, that no person shall be deprived of his life or personal liberty except according to procedure established by law. Through an extraordinarily expansive process of judicial interpretation, the Indian Supreme Court has read into Article 21 a comprehensive range of rights that go far beyond the minimum guarantee against physical violence and unlawful detention. These include the right to livelihood (*Olga Tellis v. Bombay Municipal Corporation*, 1985), the right to health (*Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, 1996), the right to education (*J.P. Unnikrishnan v. State of Andhra Pradesh*, 1993, eventually leading to the constitutional amendment making education a justiciable fundamental right), the right to shelter (*Shantistar Builders v. Narayan Khimalal Totame*, 1990), the right to a dignified environment (*Subhash Kumar v. State of Bihar*, 1991), and the right to food (*People's Union for Civil Liberties v. Union of India*, 2001).

This expansive interpretation of Article 21 has been both celebrated and criticized. It has been celebrated as a triumph of constitutional imagination: the use of an open-textured constitutional provision to give constitutional force to the social and economic rights that the constitutional framers placed in the non-justiciable directive principles, thereby narrowing the gap between the constitution's aspirations and its legal reality. It has been criticized as a form of judicial overreach: the conversion of political aspirations into legal rights without the democratic mandate necessary for such a fundamental change in the constitutional order, and without the institutional capacity of the courts to effectively manage the complex socioeconomic issues that the expanded rights agenda raises.

Bangladesh's courts have been more conservative than their Indian counterparts in developing the socioeconomic dimensions of Article 32, but the trajectory is clearly in the direction of greater engagement with social and economic rights through the constitutional rights framework. The High Court Division has issued decisions recognizing the right to education (in the context of the right to life and dignity), the right to health care for persons in state custody, and the right

to adequate food and housing for certain vulnerable groups. These decisions have been cautious and incremental rather than sweeping, but they represent a clear direction of travel toward the recognition that meaningful constitutional rights protection in Bangladesh requires attention to the social and economic conditions of people's lives, not merely to their formal civil and political freedoms.

10.3 The 2025 Reform Proposals: Making Socioeconomic Rights Justiciable

The most significant contemporary development in the domain of socioeconomic rights in Bangladesh is the Constitutional Reform Commission's 2025 recommendation to merge Parts Two and Three of the Constitution into a unified, justiciable Charter of Fundamental Rights and Freedoms. This recommendation, one of the most radical and consequential in the Commission's report, would transform the constitutional framework for rights protection by making the social and economic rights currently contained in the non-justiciable directive principles directly enforceable through the courts.

The Commission recommended that the unified Charter should include, as justiciable constitutional rights, the rights to food, clothing, shelter, education, and health care, alongside the existing civil and political rights of Part Three. The right to vote was also recommended for inclusion as a justiciable constitutional right, recognizing the fundamental importance of electoral participation to democratic self-government. The Commission acknowledged the practical difficulty of making all socioeconomic rights immediately and fully justiciable, and recommended the adoption of a "progressive realization" framework, drawing on the ICESCR model, that would require the state to demonstrate continuous progress toward the full realization of socioeconomic rights, even if their complete realization was dependent on the availability of resources.

This recommendation reflects the global trend toward the justiciability of socioeconomic rights that has developed strongly in the twenty-first century. The South African Constitution of 1996 pioneered the explicit constitutionalization of socioeconomic rights, including the rights to housing, health care, food, water, and social security. The Constitutional Court of South Africa's landmark decisions, particularly *Grootboom v. Government of the Republic of South Africa* (2000) and *Minister of Health v. Treatment Action Campaign* (2002), established a jurisprudential framework for the adjudication of socioeconomic rights claims that has been enormously influential in comparative constitutional law, including in South Asia.

The *Grootboom* framework, which requires the state to demonstrate that it has a reasonable program for the progressive realization of socioeconomic rights, taking into account the needs of the most vulnerable, provides a model for Bangladesh's courts that avoids both the excessive judicial passivity of complete non-justiciability and the excessive judicial activism of requiring the state to immediately provide all socioeconomic rights to all persons. It establishes a middle path in which courts exercise genuine constitutional authority to enforce socioeconomic rights obligations while respecting the democratic primacy of the legislature and executive in determining the specific programs and priorities through which those obligations are to be fulfilled.

Islam's constitutional framework, with its emphasis on the interpretive connection between directive principles and fundamental rights and its openness to the incremental development of constitutional rights through judicial interpretation, provides a natural theoretical foundation for the progressive realization approach that the Constitutional Reform Commission has recommended. His analysis anticipated, without fully developing, the direction that Bangladesh's constitutional rights jurisprudence would need to take in order to address the social and economic realities of a country where millions of people live in conditions that make the formal civil and political rights effectively inaccessible.

CHAPTER ELEVEN: THE LIMITATIONS CLAUSE ANALYSIS -- WHEN RIGHTS MUST YIELD

11.1 The Architecture of Rights Limitations

No right in Bangladesh's Constitution is absolute. Every fundamental right is subject to some form of limitation, whether through an explicit limitation clause in the rights provision itself, through the general provisions of Article 26 that require laws to be consistent with Part Three, or through the overriding principle that rights must be balanced against other constitutional values including the rights of others, the security of the state, public order, and the general welfare of the community. Understanding the principles that govern the constitutional limitations on fundamental rights is as important as understanding the rights themselves, because the limitations are as much a part of the constitutional framework as the rights they qualify.

The limitation clauses in Bangladesh's Constitution are not uniform in their drafting or in the grounds they permit for rights restriction. Some rights provisions contain their own specific limitation clauses that enumerate the permissible grounds for restriction: Article 36 allows restrictions on freedom of movement in the public interest, Article 37 allows restrictions on freedom of assembly in the interests of public order or public health, Article 38 allows restrictions on freedom of association in the interests of public order or morality, Article 39(2) allows restrictions on freedom of expression in the interests of the security of the state, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, or incitement to an offense. Other rights provisions (such as Article 32 on the right to life and personal liberty) do not contain explicit limitation clauses but are qualified by the phrase "in accordance with law," which has been interpreted to require substantive as well as formal legal authority.

Islam's analysis of the limitation clauses drew on a rich tradition of comparative constitutional analysis and philosophical reflection on the nature of rights. He identified three key principles that he argued should govern the application of any limitation clause in Bangladesh's Constitution: the principle of legality, the principle of legitimate objective, and the principle of proportionality.

The principle of legality requires that any restriction on a fundamental right must be imposed by law: not merely by executive discretion or administrative decision, but by a norm that is

accessible to the public (published and available), precise enough to allow people to know what conduct is restricted, and stable enough to provide a reliable guide to behavior. A restriction imposed by secret executive orders, or by vague and unpredictable laws that give unlimited discretion to enforcement authorities, violates the principle of legality regardless of whether it pursues a legitimate objective.

The principle of legitimate objective requires that any restriction on a fundamental right must be imposed for a purpose that is recognized by the constitution as justifying restrictions on that particular right. The specific limitation clauses in the rights provisions identify the permissible objectives: public order, national security, public health, the rights of others, and so forth. A restriction imposed for a purpose not within the recognized categories, for example a restriction on freedom of expression imposed because the government finds the expression politically embarrassing rather than because it genuinely threatens national security or public order, is not justified by any legitimate constitutional objective and is therefore constitutionally invalid.

The principle of proportionality, which Islam described as the most important and the most practically demanding of the three principles, requires that any restriction on a fundamental right must be proportionate to the legitimate objective it pursues. Proportionality analysis involves three sub-principles: the restriction must be rationally connected to the objective (there must be a genuine causal relationship between the restriction and the achievement of the objective, not merely a speculative or pretextual connection); the restriction must impair the right as little as possible (if the objective can be achieved by a measure that restricts the right less severely, then the more restrictive measure is disproportionate); and the benefits of the restriction in terms of the achievement of the objective must outweigh the costs in terms of the impairment of the right.

This proportionality analysis, which Islam derived from the logic of constitutional rights protection and from comparative constitutional jurisprudence (including the German Basic Law's concept of *Verhältnismässigkeit*, which translates as proportionality), has become increasingly central to Bangladesh's Supreme Court's approach to limitation clause analysis. The courts' more recent decisions show a growing sophistication in the application of proportionality principles, reflecting the influence of both the domestic doctrinal framework that Islam helped to develop and the global convergence of constitutional adjudication around proportionality as the dominant framework for resolving rights-limiting conflicts.

11.2 Emergency Powers and the Suspension of Rights

A separate and particularly important dimension of the constitutional framework for rights limitations is the emergency powers provisions in Part IX of Bangladesh's Constitution (Articles 141A to 141C). These provisions allow the President, acting on the advice of the Prime Minister, to declare a state of emergency when the security or economic life of Bangladesh is threatened, and to suspend the application of certain fundamental rights during the period of the emergency. The provisions specify which rights can be suspended (those in Articles 36, 37, 38, 39, 40, and 42), which cannot (Article 35 on protection against retroactive punishment, double jeopardy, and self-incrimination, as well as, by implication, Articles 27, 28, 29, 31, 32, 33, and 34), and what procedural safeguards apply (parliamentary approval within thirty days, periodic renewal, parliamentary power to revoke).

The constitutional history of emergency powers in Bangladesh is a history of consistent abuse. The emergency provisions of the 1972 Constitution were used and abused by successive governments to suspend constitutional rights for extended periods, often without genuine emergency justification and primarily for political purposes. General Ershad's martial law period from 1982 to 1990 represented the most extreme example of emergency rule, but the formal constitutional emergency declared by President Iajuddin Ahmed in January 2007 and maintained through 2008 by the military-backed caretaker government (the so-called "minus two" government that attempted to remove Sheikh Hasina and Khaleda Zia from Bangladeshi politics) was also a significant and constitutionally problematic exercise of emergency powers.

Islam's analysis of the emergency powers provisions was thoroughly critical. He acknowledged that genuine emergencies, situations of genuine threat to the survival of the constitutional order, might justify temporary restrictions on certain rights. But he argued that the constitutional provisions needed to be interpreted strictly and the courts needed to be willing to enforce those provisions even in the face of executive claims of emergency necessity. He drew on the comparative jurisprudence on emergency powers, particularly the European Court of Human Rights' jurisprudence on the derogation provisions of the European Convention on Human Rights, to develop a framework for judicial review of emergency declarations that would prevent the abuse of emergency powers while leaving sufficient room for genuine emergency response.

CHAPTER TWELVE: THE SPECIAL EXCLUSIONS -- ARTICLES 47 AND 47A

12.1 The Constitutional Shield for Prosecution of Liberation War Crimes

Articles 47 and 47A of Bangladesh's Constitution create specific exceptions to the fundamental rights protections in a manner that is unique in the country's constitutional framework and that has generated significant controversy and constitutional debate. These provisions were originally introduced to address the prosecution of individuals responsible for atrocities committed during the 1971 Liberation War, and their subsequent application has raised profound questions about the compatibility of special tribunals and special legal processes with constitutional rights guarantees.

Article 47(3) provides that no law shall be deemed to be void on the ground of inconsistency with fundamental rights if the law is a law enacted for the purpose of depriving persons who are members of any armed or defence services or a police service or any auxiliary force of their fundamental rights. This provision, which Islam analyzed as the "armed forces exception," reflects the established constitutional principle that persons serving in the military and security services operate under special legal regimes, including disciplinary regimes that restrict the exercise of certain fundamental rights (such as freedom of association in trade unions) and that impose obligations of obedience and professional conduct that would be inappropriate for ordinary citizens.

More controversial is Article 47A, which was introduced by the third amendment to the Constitution (1974) and which provides that Articles 31, 35(1), 35(3), and 44 do not apply to

proceedings against persons accused of crimes against humanity, genocide, war crimes, or other crimes as specified in the First Schedule. This provision removes the protections against retroactive criminal punishment, self-incrimination, and the right to enforce fundamental rights in court from persons tried under the special legal framework established for the prosecution of Liberation War atrocities.

The political and constitutional history of Article 47A is complex. It was introduced at a time when the post-liberation government was grappling with the question of how to hold accountable the large number of individuals who had collaborated with the Pakistani Army in committing atrocities during the Liberation War. The provision reflected a judgment that the ordinary constitutional protections for accused persons might be an obstacle to the effective prosecution of individuals responsible for grave crimes against humanity, and that the unique historical circumstances of the Liberation War justified a special constitutional framework for their prosecution.

Islam's analysis of Article 47A was among the most carefully and critically argued sections of his constitutional law book. He acknowledged the legitimacy of the objective, the prosecution of persons responsible for serious atrocities, but he was deeply concerned about the constitutional implications of removing fundamental procedural rights from any category of accused persons. He argued that the rights to be free from retroactive punishment and self-incrimination, and the right to enforce one's constitutional rights in court, were not merely procedural technicalities but were fundamental to the concept of a fair trial and to the rule of law itself. Removing them from any category of accused persons, however serious the crimes they were charged with, created a precedent that was dangerous for the constitutional order as a whole.

The practical significance of Article 47A became acute when Bangladesh finally established the International Crimes Tribunal (ICT) in 2010, which began trying persons alleged to have committed crimes against humanity and war crimes during the 1971 Liberation War. The ICT process generated significant controversy, with international human rights organizations, the United Nations, and legal scholars raising concerns about the fairness of the proceedings, the independence of the tribunal, and the application of special procedural rules that departed from international standards for fair trials in criminal proceedings.

Islam's constitutional analysis of these issues, while written before the ICT process began in its current form, provides the most intellectually rigorous framework for evaluating the constitutional adequacy of the special tribunal system. His argument that constitutional procedural rights serve purposes that go beyond the interests of individual accused persons, that they are guarantees of the integrity of the legal process itself, and that their removal creates institutional risks for the entire constitutional order, is an argument that has been validated by the international controversy surrounding the ICT proceedings.

CHAPTER THIRTEEN: COMPARATIVE PERSPECTIVES AND GLOBAL CONSTITUTIONAL TRENDS

13.1 Bangladesh in the World of Rights: A Comparative Assessment

Bangladesh's fundamental rights framework, as analyzed by Mahmudul Islam and as developed through decades of Supreme Court jurisprudence, exists within a broader global constitutional landscape that has been undergoing significant transformation during the period from the 1990s through the present. Understanding where Bangladesh's constitutional rights framework stands in relation to this global transformation, what it shares with other constitutional systems, where it has lagged behind global trends, and where it has made distinctive contributions, is essential to a complete assessment of both Islam's constitutional scholarship and the reform challenges that Bangladesh now faces.

The global trend in constitutional rights protection over the past three decades has been in the direction of what scholars have described as the "rights revolution": the progressive expansion of constitutional rights protection to cover an ever-wider range of human interests and concerns, the development of more sophisticated and demanding frameworks for judicial rights adjudication, the growing role of international human rights standards in domestic constitutional interpretation, and the increasing emphasis on positive state obligations to create the conditions for effective rights enjoyment rather than merely negative obligations to refrain from rights violations.

Bangladesh has participated in this global rights revolution, but unevenly and incompletely. On the positive side, the development of PIL, the expansion of the right to life jurisprudence, the increasing engagement with international human rights standards, and the growing activism of the High Court Division in constitutional rights cases all reflect the influence of global constitutional trends on Bangladesh's judicial practice. On the negative side, the persistence of preventive detention legislation, the use of digital law to suppress free expression, the systemic failures of accountability for torture and extrajudicial killings, and the non-justiciability of socioeconomic rights have left Bangladesh significantly behind the frontiers of global constitutional practice.

The Constitutional Reform Commission's 2025 recommendations, if implemented, would represent a significant step toward bringing Bangladesh's constitutional rights framework into alignment with global constitutional best practices. The recommendation for a unified justiciable Bill of Rights, the recommendation for independent constitutional commissions including a Human Rights Commission with genuine enforcement powers, and the recommendation for explicit constitutional protection of new rights including the right to a healthy environment and the right to informational privacy, all reflect the influence of global constitutional trends and the judgment that Bangladesh's constitutional order needs to be brought up to the standards that its citizens deserve and that the international community expects.

13.2 The Basic Structure Doctrine and Its Implications for Rights Protection

One of the most important comparative constitutional developments in South Asia, with direct relevance to the fundamental rights framework in Bangladesh, is the doctrine of the basic structure of the constitution, developed most fully by the Indian Supreme Court in *Kesavananda Bharati v. State of Kerala* (1973) and adopted, with modifications, by Bangladesh's own

Supreme Court in the Anwar Hossain Chowdhury case (1989) and the Fifth Amendment case (2010).

The basic structure doctrine holds that there are certain features of a constitution that are so fundamental to its character and identity as a constitutional order that they cannot be altered or destroyed even through the formal constitutional amendment process. Even a constitutional amendment passed by the required supermajority of the legislature, and complying in every formal respect with the amendment procedure, is invalid if it destroys a feature that belongs to the basic structure of the constitution.

In Bangladesh's constitutional jurisprudence, the basic structure of the constitution has been held to include, among other elements: the supremacy of the constitution, the republican and democratic character of the state, the separation of powers, the independence of the judiciary, the rule of law, and the protection of fundamental rights. This last element is of crucial importance for the analysis of Part Three of the Constitution: it means that the Parliament cannot validly amend the Constitution to abolish or fundamentally undermine the fundamental rights protections, even through the formal amendment process. The constitutional commitment to the protection of fundamental rights is, on this analysis, a permanent and irremovable feature of Bangladesh's constitutional order.

Islam was a strong advocate of the basic structure doctrine in Bangladesh's constitutional context, arguing that it provided the most robust available protection against the kind of constitutional subversion through formal amendment that Bangladesh had repeatedly experienced in its constitutional history. The fourth amendment of 1975, the fifth amendment of 1979, the seventh amendment of 1986, and the eighth amendment of 1988 had all used the formal constitutional amendment process to make changes to the constitutional order that were, in substance, fundamentally incompatible with the constitutional principles of democracy, separation of powers, and fundamental rights protection. The basic structure doctrine provided a constitutional basis for invalidating such amendments even when they complied with all the formal requirements of the amendment procedure.

The Constitutional Reform Commission's 2025 recommendation for the repeal of Articles 7A and 7B, which had been introduced by the Hasina government to constitutionally entrench certain provisions against amendment, reflects a complex engagement with the basic structure doctrine. Articles 7A and 7B had themselves been controversial because they represented an attempt to use constitutional form to entrench particular political choices against future democratic revision, going beyond the protection of genuinely fundamental constitutional principles to protect specific constitutional arrangements that might legitimately be changed through the democratic process. The Commission's recommendation reflects the judgment that the protection of constitutional fundamentals should rely on the judiciary's application of the basic structure doctrine rather than on the inflexibility of specific constitutional provisions, a judgment that is consistent with Islam's own understanding of how constitutional protection should work.

13.3 The Global Turn to Transformative Constitutionalism and Its Relevance to Bangladesh

One of the most important developments in comparative constitutional law of the first quarter of the twenty-first century has been the emergence of what scholars describe as "transformative constitutionalism": the understanding that constitutions in post-colonial, post-conflict, or post-authoritarian societies are not merely instruments for organizing governmental power and protecting individual liberty, but transformative tools for remaking the social, economic, and political order in accordance with the democratic aspirations of peoples who have suffered exploitation, domination, and exclusion.

The concept of transformative constitutionalism, developed most fully in the South African context by scholars like Karl Klare, has deep resonances with the constitutional history and constitutional aspirations of Bangladesh. Bangladesh's 1972 Constitution was, from its inception, a transformative document: it was not merely a technical charter of government but a declaration of the values, aspirations, and identity of a people who had just emerged from a devastating war of liberation against exploitation and domination. The commitment to equality, the aspiration to socialism, the vision of a secular democratic republic in which all citizens would be free from discrimination and exploitation: these were transformative constitutional goals, not merely organizational arrangements.

The seventy-first year of Bangladesh's independence (1971 to the present) is, from the perspective of transformative constitutionalism, a story of partial success and continuing aspiration. The transformation that the founding constitutional moment promised has been partially achieved: Bangladesh has built a functioning democratic state, achieved significant economic development, expanded educational and health services, and created a civil society of considerable vitality. But the constitutional promises of equality, freedom from exploitation, and equal citizenship regardless of religion, sex, or social background remain significantly unrealized, as the Constitutional Reform Commission's analysis of 2025 has documented in systematic detail.

Mahmudul Islam's constitutional scholarship is, in its deepest dimension, a contribution to the project of transformative constitutionalism in Bangladesh: it is an attempt to develop the analytical framework through which the transformative aspirations of the 1972 Constitution can be progressively realized through the instruments of constitutional law. His insistence that constitutional provisions must be interpreted in light of their underlying purposes, his advocacy for a broad and purposive reading of fundamental rights, his engagement with the social and economic conditions that affect the practical exercise of constitutional freedoms, and his critical analysis of the institutional failures that have prevented the realization of constitutional aspirations all reflect a commitment to constitutional transformation that goes beyond the mere description of existing constitutional law.

CHAPTER FOURTEEN: ENFORCEMENT, ACCOUNTABILITY, AND THE INSTITUTIONAL FRAMEWORK OF RIGHTS PROTECTION

14.1 The Institutional Matrix of Fundamental Rights Protection

The jurisprudential analysis of fundamental rights that has occupied the preceding chapters is essential but insufficient for a complete understanding of constitutional rights protection in Bangladesh. Constitutional rights provisions and judicial interpretations of those provisions are only as effective as the institutional infrastructure that supports their enforcement: the courts that adjudicate rights claims, the law enforcement agencies that are constrained by rights obligations, the independent commissions that oversee rights compliance, the civil society organizations that advocate for rights protection, and the political institutions that respond to rights-based demands.

Islam's constitutional law book was notable for its attention to this institutional dimension of rights protection, reflecting his practical experience as a lawyer who had seen firsthand how institutional failures could undermine even the most clearly articulated constitutional rights. He analyzed the Supreme Court's institutional capacity and independence, the adequacy of legal aid and access to justice for marginalized citizens, the structure and effectiveness of accountability mechanisms for law enforcement agencies, and the role of independent constitutional bodies in the rights protection system.

His analysis of judicial independence was particularly searching. He argued that the independence of the judiciary was not merely an institutional arrangement for the convenience of lawyers and judges, but a constitutional imperative that was essential to the meaningful protection of fundamental rights. A judiciary that was subject to executive influence in the appointment, promotion, and removal of judges, a judiciary whose members feared for their career prospects if they issued decisions unfavorable to the government, could not reliably protect the constitutional rights of citizens against state abuse. The institutional independence of the judiciary was therefore a prerequisite for the practical effectiveness of the constitutional fundamental rights guarantee.

14.2 The National Human Rights Commission and Its Limitations

Bangladesh established a National Human Rights Commission (NHRC) in 2009, under the National Human Rights Commission Act 2009. The NHRC was intended to serve as an independent body for the investigation of human rights violations, the promotion of human rights education, and the monitoring of the state's compliance with its constitutional and international human rights obligations. The establishment of the NHRC was a significant institutional development, reflecting both domestic demand for improved human rights accountability and international pressure (the Paris Principles governing national human rights institutions require that they be established by law and be genuinely independent of government).

Islam did not have the opportunity to assess the NHRC's performance in his constitutional law book, since the Commission was established very shortly before his 2012 edition and its track record was too limited to evaluate. But the analytical framework he developed for assessing independent constitutional institutions, with its emphasis on genuine financial and operational independence, adequate powers of investigation and enforcement, transparent appointment procedures, and effective civil society engagement, provides the most useful framework for assessing whether the NHRC has fulfilled its constitutional promise.

The assessment, based on the Commission's decade-long track record, is disappointing. The NHRC has been consistently criticized for failing to investigate the most serious and systematic human rights violations, including extrajudicial killings, custodial torture, and enforced disappearances. Its commissioners have been appointed through a process that has been insufficiently independent of government influence. Its investigative powers have been inadequately backed by enforcement mechanisms. And its engagement with civil society has been inconsistent and sometimes defensive rather than open and collaborative.

The Constitutional Reform Commission's 2025 report identified the NHRC as an institution requiring fundamental reform, and recommended significant changes to its establishment law, its appointment procedures, its investigative powers, and its enforcement mechanisms. More significantly, the Commission recommended the explicit constitutional recognition of the NHRC, elevating it from a creature of ordinary legislation to a constitutional body with guaranteed independence and authority. This constitutional elevation would provide the NHRC with a level of institutional security and legitimacy that would make it far less vulnerable to executive influence and political pressure.

14.3 The Attorney General's Role and the Public Interest

A particularly important but rarely analyzed dimension of the institutional framework for fundamental rights protection is the role of the Attorney General and the office of the government's legal services. In a constitutional system like Bangladesh's, the Attorney General is simultaneously the representative of the government in constitutional litigation and an officer of the court with obligations that extend beyond mere representation of the government's interests to the broader interests of constitutional justice.

The tension between these roles is most acute in fundamental rights cases where the government is the respondent, where the Attorney General is called upon to defend government action or inaction that has been challenged as a violation of constitutional rights. The manner in which individual attorneys general have navigated this tension has varied significantly across Bangladesh's constitutional history, from attorneys general who have defended government positions with a technical skill that sometimes bordered on dishonesty, to attorneys general who have acknowledged government wrongdoing before the court and conceded that the constitutional challenge had merit.

Mahmudul Islam's own tenure as Attorney General from 1998 to 2001 was marked by a reputation for professional integrity that reflected his commitment to the constitutional responsibilities of the office. His academic analysis of the Attorney General's constitutional role, developed in his constitutional law book, reflects his understanding that the highest standard of professional conduct for an attorney general is not unconditional loyalty to the government of the day but loyalty to the constitutional order that both the government and the courts are sworn to serve.

CHAPTER FIFTEEN: THE CONSTITUTIONAL REFORM AGENDA OF 2024-2026 AND THE FUNDAMENTAL RIGHTS FRAMEWORK

15.1 The July 2024 Uprising as a Constitutional Moment

The student-led uprising of July and August 2024 that brought down Sheikh Hasina's government and led to the formation of the interim administration under Professor Muhammad Yunus was, in constitutional terms, one of the most significant events in Bangladesh's political history since the Liberation War of 1971 and the restoration of democracy in 1990. It was an event that demonstrated, with startling clarity, the gap between the constitutional promises of fundamental rights and the realities of a political system that had, over the preceding decade and a half, progressively concentrated power, undermined institutional independence, and eroded the practical conditions for the exercise of constitutional freedoms.

The immediate constitutional significance of the July 2024 uprising lay in the specific fundamental rights violations that triggered and accompanied it: the shooting of student protesters exercising their constitutional right to peaceful assembly (Article 37), the arrest and detention of student leaders without charge or due process (Articles 32 and 33), the shutdown of internet services that prevented citizens from communicating and from accessing information (Article 39), the deployment of the military and law enforcement agencies to suppress the protests through excessive force (the entire fundamental rights framework), and the use of the Digital Security Act to prosecute students and journalists for their online commentary on the protests (Article 39). Each of these actions constituted, on the analysis developed throughout this chapter, a clear and serious violation of the fundamental rights guaranteed by Bangladesh's Constitution.

The constitutional significance of the uprising went beyond the immediate violations, however, to raise deeper questions about the structural conditions that had allowed those violations to occur. How was it possible for a government to systematically violate the constitutional rights of its citizens over an extended period without effective judicial correction? What had gone wrong with the institutional infrastructure of rights protection, the courts, the human rights commission, the law enforcement accountability mechanisms, the independent media, that had allowed the violations to continue? And what structural reforms were needed to prevent similar violations in the future?

These questions are precisely the questions that Mahmudul Islam's constitutional scholarship had been addressing for decades, and the Constitutional Reform Commission's analysis of 2024-2025, which drew extensively on Islam's framework, represented the most systematic attempt in Bangladesh's history to translate those questions into a concrete constitutional reform agenda.

15.2 The Reform Commission's Rights Agenda: Mapping the Constitutional Transformation

The Constitutional Reform Commission's January 2025 report, submitted to the interim government under Chief Adviser Muhammad Yunus, contains the most comprehensive

constitutional reform agenda in Bangladesh's history since the founding of the republic in 1971. From the perspective of fundamental rights, the most significant proposals are the following.

First, the Commission recommended the unification of Parts Two and Three of the Constitution into a single, justiciable Charter of Fundamental Rights and Freedoms. This recommendation, which draws directly on the theoretical framework developed by Islam and others, would make the socioeconomic rights currently in Part Two directly enforceable through the courts, closing the gap between the constitutional aspirations of the directive principles and the legally enforceable rights of Part Three. The Commission recommended a progressive realization standard for socioeconomic rights, consistent with the ICESCR model, which would require the state to demonstrate continuous progress toward full realization without exposing the courts to the impossible task of immediately providing all socioeconomic rights to all citizens.

Second, the Commission recommended significant expansion of the catalogue of constitutional rights, adding new rights that reflect the emerging global consensus on the rights necessary for a dignified life in the twenty-first century. These include the right to a clean and healthy environment (reflecting the global constitutional trend toward environmental rights, exemplified by Colombia, Ecuador, India, and more than 100 other constitutional systems), the right to informational privacy (responding to the surveillance state concerns raised by the Digital Security Act and by broader trends in digital governance), and the right to vote as a justiciable fundamental right (recognizing the central importance of electoral participation to democratic self-government and providing constitutional authority for the enforcement of electoral rights through the courts).

Third, the Commission recommended the replacement of Islam (or the state religion provision) with a principle of pluralism as a foundational constitutional value, recognizing the diversity of Bangladesh's religious and cultural communities and the constitutional commitment to equal treatment of all communities regardless of religious or cultural identity. This recommendation, which navigates delicately between the restored principle of secularism and the retained provision declaring Islam the state religion, represents the Commission's attempt to find a constitutional formulation that can command broad political support while honoring the constitutional principle of equal citizenship.

Fourth, the Commission recommended significant reforms to the limitation clauses governing the restriction of fundamental rights, replacing the current patchwork of provision-specific limitation clauses with a general limitation clause modeled on Section 36 of the South African Constitution, which requires any limitation of a right to be reasonable and justifiable in an open and democratic society based on human dignity, equality, and freedom. This general limitation clause, combined with an explicit requirement for proportionality analysis in any case where a right is limited, would provide a more coherent and more protective framework for rights limitation than the existing constitutional structure.

Fifth, the Commission recommended the abolition of emergency powers that allow the suspension of fundamental rights, proposing instead that even in declared states of emergency, the rights to life, dignity, freedom from torture, and access to courts shall be non-derogable. This recommendation, consistent with international human rights law (the ICCPR identifies a set of

non-derogable rights that cannot be suspended even during genuine public emergencies), would significantly strengthen the constitutional protection of the most fundamental rights against emergency rule.

The July National Charter of October 2025, negotiated among twenty-four political parties and signed under the auspices of the National Consensus Commission, incorporated a significant number of the Commission's recommendations, though not all. The referendum of February 2026, which simultaneously took place alongside the parliamentary elections, produced a majority "Yes" vote for the reform package, though the ambiguity of the referendum questions has raised constitutional questions about exactly which reforms have been endorsed and with what binding force.

15.3 The Challenge of Implementation: Rights on Paper and Rights in Practice

The constitutional reform process of 2024-2026 is a moment of extraordinary constitutional opportunity for Bangladesh. The proposals before the country, building on the analytical framework developed by scholars like Mahmudul Islam over decades of constitutional scholarship and litigation, represent the most ambitious and most carefully considered constitutional reform agenda in the country's history. If implemented effectively, they have the potential to transform Bangladesh's constitutional order from one in which the formal constitutional guarantees of fundamental rights are frequently honored more in the breach than in the observance to one in which those guarantees are effectively enforced by institutions that are genuinely independent, adequately resourced, and committed to the constitutional values they are tasked with upholding.

But the history of constitutional reform in Bangladesh, and indeed the history of constitutional reform in comparable developing democracies around the world, provides ample grounds for caution. Constitutional texts can be changed more easily than the institutional cultures, political behaviors, and social structures that determine whether constitutional norms are genuinely respected. The formal constitutional protection of fundamental rights is a necessary but not sufficient condition for their effective enjoyment. What is also needed are courts that are truly independent, law enforcement agencies that are effectively accountable, political parties that respect constitutional constraints on the exercise of power, civil society organizations that are able to monitor constitutional compliance and mobilize the public in defense of constitutional rights, and a legal culture throughout the society in which constitutional rights are understood and valued.

Mahmudul Islam's constitutional scholarship contributed immeasurably to the development of that legal culture in Bangladesh. Through his book, through his teaching, through his advocacy before the courts, and through his example as a constitutional lawyer who took seriously the obligations of professional integrity and constitutional fidelity, he helped to create the conditions in which the constitutional reform of 2024-2026 became possible. The constitutional future of Bangladesh depends, in the final analysis, not merely on the quality of the constitutional text but on the quality of the constitutional culture: the norms, values, institutions, and practices that determine whether the text is given the life it aspires to.

CHAPTER SIXTEEN: THE JURISPRUDENCE OF EMERGENCY -- FUNDAMENTAL RIGHTS IN EXCEPTIONAL CIRCUMSTANCES

16.1 Constitutional Democracy Under Pressure

The relationship between fundamental rights and emergency powers is perhaps the most severe test that a constitutional order faces. It is in moments of crisis, when the security of the state is genuinely threatened, when public order is disrupted, or when national survival is at stake, that the temptation to suspend or restrict constitutional rights is most powerful, the executive claim that security requires the temporary abandonment of rights is most persuasive, and the institutional pressures on the judiciary to defer to executive judgment are most intense.

Islam's analysis of emergency powers in Bangladesh's constitutional framework began with the recognition that the constitutional provisions permitting the declaration of states of emergency (Articles 141A to 141C) and the suspension of certain fundamental rights during emergencies were not constitutional aberrations or concessions to authoritarianism, but were genuine attempts by the constitutional framers to provide a legal framework for the exercise of extraordinary governmental powers in extraordinary circumstances. The alternative to constitutional provisions on emergency would not be the absence of emergency powers but the exercise of those powers outside any constitutional framework, a situation far more dangerous to constitutional order than the existence of regulated emergency provisions.

Having acknowledged the legitimacy of the constitutional emergency framework in principle, Islam subjected it to searching critical analysis in practice. He identified a series of structural features of Bangladesh's emergency provisions that made them vulnerable to abuse: the breadth of the circumstances that could justify a declaration of emergency (not merely armed insurrection or external attack, but any threat to the "security or economic life" of the state, a formulation of considerable vagueness), the ease with which emergency declarations could be extended (simple parliamentary majority required for renewal), the limited judicial review of the constitutional basis for the emergency declaration, and the extensive range of fundamental rights that could be suspended during an emergency.

These structural vulnerabilities have been exploited repeatedly in Bangladesh's constitutional history, and Islam's analysis of that history is among the most politically forthright in his constitutional law book. He reviewed each episode of emergency rule or martial law in Bangladesh's post-independence history and assessed, with careful constitutional analysis, whether the circumstances justified the extraordinary measures taken. His assessments were rarely favorable to the governments that had declared or maintained the emergencies, and his analysis of the 2007-2008 emergency in particular was a precise and devastating constitutional critique of a government that had used the constitutional emergency provisions to suspend democratic processes for nearly two years without genuine emergency justification.

16.2 Derogation from Rights: International Standards and Domestic Practice

The international human rights framework provides important standards for the constitutional analysis of emergency powers and rights derogation. Article 4 of the ICCPR, to which Bangladesh is a party, permits states to derogate from certain treaty obligations in times of public emergency, but only subject to strict conditions: the emergency must be officially proclaimed, it must genuinely threaten the life of the nation, the measures must be strictly required by the exigencies of the situation, they must not be inconsistent with international law, and they must not discriminate on grounds of race, colour, sex, language, religion, or social origin. Moreover, Article 4 specifies a list of rights that cannot be derogated from even in genuine emergencies: these non-derogable rights include the right to life, freedom from torture and cruel treatment, freedom from slavery, freedom from retroactive punishment, and freedom of thought, conscience, and religion.

The principle of non-derogable rights is constitutionally significant for Bangladesh because it establishes a minimum core of rights that must be protected in all circumstances, even the most extreme. The Constitutional Reform Commission's 2025 recommendation that certain fundamental rights should be non-derogable even during declared states of emergency draws directly on this international standard and represents a significant strengthening of the constitutional protection of core rights against emergency abuse.

The Human Rights Committee, the treaty body responsible for monitoring compliance with the ICCPR, has elaborated on the conditions for permissible derogation in a series of General Comments that provide authoritative guidance for the constitutional analysis of emergency powers. The Committee's General Comment 29 (2001) on derogation during states of emergency is particularly relevant: it emphasizes that the principle of proportionality must apply even to permitted derogations, that the burden of justifying derogations lies with the state, and that the requirement that derogations be "strictly required by the exigencies of the situation" imposes a demanding standard that cannot be satisfied by mere reference to a declared emergency.

Applying these international standards to Bangladesh's constitutional emergency framework, it becomes clear that the constitutional provisions for the suspension of fundamental rights during emergencies require significant strengthening if they are to provide effective constitutional protection. The Constitutional Reform Commission's recommendations, which draw on these international standards while adapting them to the specific circumstances of Bangladesh's constitutional order, represent the most important contemporary contribution to this constitutional strengthening process.

CONCLUSION TO PART TWO: RIGHTS, REALITY, AND THE CONSTITUTIONAL FUTURE

The Jurisprudential Legacy of Mahmudul Islam in the Domain of Fundamental Rights

As this second part of our eight-part textbook draws to a close, it is appropriate to reflect on what Mahmudul Islam's constitutional scholarship has contributed to the development of fundamental

rights jurisprudence in Bangladesh and what challenges remain to be addressed in the constitutional reform process that is now underway.

Islam's most fundamental contribution to fundamental rights jurisprudence was his insistence that constitutional rights are not merely legal provisions to be mechanically applied but expressions of moral commitments about the dignity, equality, and freedom of every human being. He approached the fundamental rights provisions of Bangladesh's Constitution with the seriousness of a philosopher and the precision of a lawyer, and the combination produced a constitutional analysis that was both technically rigorous and morally engaged. He did not merely describe the text and the case law; he illuminated the underlying values and purposes that gave the rights provisions their constitutional authority and their practical significance.

His second major contribution was the development of a comprehensive and systematic framework for constitutional rights adjudication: the principles of legality, legitimate objective, and proportionality that he identified as the governing standards for rights limitation analysis, the doctrine of indirect horizontal effect that extended the reach of constitutional rights into private law relations, the understanding of PIL as a constitutionally grounded expansion of the courts' rights-protective function, and the interpretive approach of using directive principles to give substantive content to the justiciable fundamental rights. These analytical tools have been progressively adopted by Bangladesh's Supreme Court and have significantly improved the quality of constitutional rights adjudication in the country.

His third major contribution was his critical engagement with the gap between constitutional aspiration and political reality in Bangladesh's fundamental rights experience. He did not pretend that the constitutional rights were effectively protected or that the institutional infrastructure for rights protection was adequate. He identified, with analytical precision and moral honesty, the specific institutional failures, legislative abuses, and political behaviors that had prevented the constitutional rights from being effectively realized, and he proposed the institutional reforms that would be needed to close the gap between aspiration and reality.

The constitutional reform process of 2024-2026 is, in important respects, a vindication of Islam's constitutional analysis. The reforms that the Constitutional Reform Commission has recommended, the specific constitutional changes that the July Charter has proposed, and the broader institutional reform agenda that the interim government has pursued, all address the structural weaknesses that Islam identified and reflect the analytical framework he developed. The recommendations for a unified justiciable Bill of Rights, for independent constitutional commissions, for strengthened judicial independence, for the reform of preventive detention law, and for the constitutional prohibition of torture and enforced disappearances are all consistent with the direction that Islam's constitutional analysis pointed.

What remains to be accomplished is the challenge of implementation: translating constitutional text into constitutional practice, ensuring that the institutional reforms that are constitutionally mandated are actually implemented with the seriousness and the resources they require, and cultivating a constitutional culture throughout Bangladeshi society in which fundamental rights are genuinely valued, effectively protected, and actively claimed by citizens who know their rights and have the institutional support needed to enforce them.

Mahmudul Islam's constitutional scholarship provides the intellectual foundation for this work. The chapters that follow in this textbook will continue to draw on that foundation as we explore the remaining dimensions of his constitutional thought: the structure of government and the separation of powers, the constitutional economy of Bangladesh, the comparative constitutional framework, and the constitutional vision for Bangladesh's future. But the fundamental rights jurisprudence examined in this part remains the heart of that thought, the dimension in which the connection between constitutional law and human dignity is most direct and most consequential.

The constitutional promise of Bangladesh is, at its core, a promise of dignity: the promise that every citizen of the republic, regardless of their religion, race, sex, or social background, will be treated with the respect that their humanity demands and that the constitutional order will provide effective protection when that respect is withheld. Mahmudul Islam devoted his life to developing the legal framework through which that promise could be fulfilled. The generation of constitutional lawyers, scholars, and citizens who have inherited his legacy have the responsibility to carry that work forward.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART TWO

The primary sources for this part are Mahmudul Islam's "Constitutional Law of Bangladesh" (3rd ed., Mullick Brothers, 2012), particularly chapters dealing with fundamental rights (Part Three analysis), the writ jurisdiction of the High Court Division (Article 102 analysis), and the emergency provisions (Part IX analysis); the Constitution of the People's Republic of Bangladesh as amended; the major decisions of the High Court Division and Appellate Division of the Supreme Court of Bangladesh in fundamental rights cases; and the Constitutional Reform Commission's report of January 2025.

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For the specific constitutional cases discussed in this part, the reader should consult the law reports of the Bangladesh Law Chronicle (BLC), the Dhaka Law Reports (DLR), and the Bangladesh Legal Decisions (BLD), available through law libraries and through the Bangladesh Supreme Court's electronic databases.

For the constitutional reform debates and the most recent (2025 and 2026) developments in Bangladesh's constitutional reform process, the reader should consult ConstitutionNet (constitutionnet.org), International IDEA's democracy resources on Bangladesh, the Daily Star's constitutional affairs coverage, and the Prothom Alo's coverage of the constitutional reform commission's activities (in Bengali, but valuable for primary source material).

End of Part Two. Part Three of this textbook will examine the structure of government and the constitutional framework of the separation of powers in Bangladesh, analyzing Mahmudul Islam's treatment of the parliamentary system, the powers and limits of the executive, the constitutional position of the President, the independence of the judiciary, and the constitutional architecture of checks and balances, with particular attention to the systemic failures of

institutional separation that Bangladesh's constitutional history has repeatedly demonstrated and that the Constitutional Reform Commission of 2025 has sought to address through the most ambitious structural reform agenda in the country's history.

PART THREE

THE ARCHITECTURE OF STATE POWER: PARLIAMENT, EXECUTIVE, JUDICIARY, AND THE CONSTITUTIONAL ANATOMY OF THE SEPARATION OF POWERS

A Note to the Reader Entering Part Three

Parts One and Two of this textbook established the biographical and intellectual foundations of Mahmudul Islam's constitutional scholarship, and then descended into the domain of fundamental rights, exploring how the constitutional promises of freedom, equality, and dignity are given legal form and judicial enforcement in Bangladesh's constitutional order. Part Three now turns to the other great dimension of constitutional law: the organization of state power itself. If the fundamental rights provisions of Part Three of the Constitution answer the question of what the state may not do to its citizens, the structural provisions of the Constitution answer the prior question of who the state is, how it is organized, how its different organs relate to one another, and what mechanisms exist to prevent any single organ, any single institution, or any single person from accumulating power without accountability.

This is not merely a technical question about institutional design. It is a question of the deepest political and moral significance, because the experience of history, repeated across civilizations and across centuries, teaches that concentrated power is dangerous power, that institutions without accountability become instruments of oppression, and that the structural arrangements through which power is organized and limited are as important to the liberty and dignity of citizens as any formal declaration of individual rights. A constitution that declares the most generous catalogue of rights but then establishes a government in which all power flows through a single point without meaningful checks will fail to protect those rights in practice. A constitution that establishes robust structures of institutional separation, checks, and balances, even if its rights provisions are relatively modest, creates the conditions in which rights protection is institutionally possible.

Mahmudul Islam understood this with particular force and directness. His constitutional law book devoted enormous analytical energy to the structural provisions of Bangladesh's Constitution, to the organization of the Parliament, the powers of the Prime Minister and the Cabinet, the constitutional position of the President, the independence of the judiciary, and the functioning of constitutional commissions. His analysis of these provisions was consistently informed by a comparative perspective, drawing on the constitutional experiences of the United Kingdom, India, the United States, and other parliamentary and presidential systems. And it was

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consistently shaped by the specific experience of Bangladesh's own constitutional history, in which the structural weaknesses of the constitutional order had been repeatedly exploited with catastrophic consequences for democracy, the rule of law, and the protection of human rights.

Part Three of this textbook works through these structural provisions systematically and analytically. Chapter One examines the theory of separation of powers and its application to parliamentary systems. Chapter Two analyzes the constitutional framework of Bangladesh's Parliament, including its powers, its procedures, and the critical problem of Article 70. Chapter Three examines the constitutional position of the Prime Minister and the Cabinet, analyzing the concentration of executive power that has been one of the most persistent and damaging features of Bangladesh's constitutional experience. Chapter Four examines the constitutional position of the President, a figure who is formally powerful but conventionally constrained, and whose role has been deeply controversial at critical moments of constitutional crisis. Chapter Five examines the constitutional framework for the independence of the judiciary, including the appointment, tenure, and removal of judges and the structural conditions for genuine judicial independence. Chapter Six examines the constitutional bodies and independent commissions that are supposed to provide additional checks on executive power. Chapter Seven examines the caretaker government system, its constitutional history, its judicial treatment, and its role in Bangladesh's recurring electoral crises. Chapter Eight analyzes the constitutional amendment process and the basic structure doctrine. And Chapter Nine examines the post-2024 reform agenda for the structure of government, connecting the historical analysis to the most urgent contemporary constitutional questions.

CHAPTER ONE: THE THEORY OF SEPARATION OF POWERS IN PARLIAMENTARY SYSTEMS

1.1 Montesquieu, Blackstone, and the Philosophical Origins of Separation of Powers

The principle of separation of powers is among the oldest and most enduring ideas in the theory of constitutional government. Its philosophical origins lie in the classical tradition of ancient Greek and Roman political thought, but its most influential modern formulation is found in the work of Charles Louis de Secondat, Baron de la Brede et de Montesquieu, whose "The Spirit of the Laws" ("De l'Esprit des Lois"), published in 1748, articulated the doctrine in the form that would most profoundly shape the constitutional thinking of the subsequent two centuries.

Montesquieu's argument, based on his analysis of what he took to be the English constitutional system, was that political liberty was possible only when legislative, executive, and judicial power were held by different hands. When the same person, or the same body of persons, exercised more than one of these powers, there was no liberty: when legislative and executive powers were combined, arbitrary laws could be made and enforced tyrannically; when judicial power was combined with legislative power, judges could make the law as they applied it; when judicial power was combined with executive power, judges became enforcers of the will of those who held political power rather than impartial arbiters of the law. The separation of powers, for Montesquieu, was not merely an institutional convenience but a prerequisite of freedom.

Montesquieu's analysis was, as subsequent constitutional scholars recognized, an idealization rather than an accurate description of the English constitutional system as it actually functioned. The English system, far from separating the three powers into completely distinct institutions, mixed them in various ways: the judiciary was part of the legislature in the sense that the House of Lords was the highest court of appeal; the executive (the King's ministers) sat in and were accountable to the legislature; and the Lord Chancellor combined judicial and executive functions. What Montesquieu had observed was not a pure separation of powers but a system of checks and balances in which the different branches of government were connected in ways that prevented any one of them from acting without reference to the others.

This distinction between separation of powers in its pure sense (in which each branch is entirely independent of the others and exercises exclusively its own powers) and separation of powers in its functional or mixed sense (in which the different branches are connected through systems of checks and balances) is of enormous practical importance for understanding how constitutional systems actually work. Pure separation of powers, in which the legislature, executive, and judiciary are completely independent of each other and have no overlapping functions, has never existed in any actual constitutional system, and it would be practically unworkable if it did: a legislature that could not check the executive, an executive that had no legislative program, and a judiciary that could not review legislative or executive action would not produce a stable or effective constitutional order.

What real constitutional systems embody is not pure separation but a functional allocation of powers combined with a system of checks and balances: each branch has its primary function (the legislature legislates, the executive governs, the judiciary adjudicates), but each branch also has certain powers over the other branches that prevent any one of them from becoming supreme. The legislature can remove the executive through votes of no confidence (in parliamentary systems) or impeachment (in presidential systems). The executive can veto legislation (in presidential systems) or dissolve the legislature (in parliamentary systems). The judiciary can invalidate legislation and executive action through judicial review. And each branch has certain immunities from interference by the others that protect its functional independence.

Mahmudul Islam's analysis of separation of powers in Bangladesh's constitutional context was firmly grounded in this functional understanding. He did not argue that the different branches of Bangladesh's government were or should be completely isolated from one another, but that each branch needed to retain sufficient independence and sufficient authority over its own domain to serve as a genuine check on the others. His concern, sharpened by his observation of Bangladesh's constitutional experience, was that the system of checks and balances established by the 1972 Constitution had been progressively eroded until the executive, and specifically the Prime Minister, had accumulated a degree of power that was inconsistent with the constitutional design and with the basic principles of constitutional democracy.

1.2 The Westminster Model and Its Peculiarities

Bangladesh's constitutional system is explicitly modeled on the Westminster parliamentary system, derived from the British constitutional tradition and adapted through the intermediate

influence of the Pakistani and Indian constitutional frameworks that preceded Bangladesh's own Constitution. Understanding the Westminster model, including both its theoretical logic and its practical peculiarities, is essential to understanding both what Islam said about Bangladesh's government structure and how the structural reforms proposed in the constitutional reform process of 2024-2026 represent a departure from, or a modification of, the Westminster model.

The Westminster system is characterized by several defining features that together produce a constitutional order significantly different from the separation of powers model of a presidential system like the United States. First, in the Westminster system, the executive is not separately elected from the legislature but is drawn from and accountable to the legislature: the Prime Minister must be an elected member of Parliament, and the Cabinet must command a parliamentary majority in order to govern. This fusion of executive and legislative authority at the top is not a constitutional weakness in the Westminster model but a defining feature: it is the mechanism through which the executive is held continuously accountable to the elected legislature and, through it, to the people.

Second, the Westminster system is based on the principle of parliamentary sovereignty: Parliament is, in the classical Diceyan formulation, legally supreme, able to make or unmake any law, subject only to the limits imposed by a written constitution where one exists. In Bangladesh, as in India and in contrast to the uncoded British constitutional tradition, parliamentary sovereignty is qualified by the existence of a written constitution that is supreme over ordinary parliamentary legislation, and by the power of the Supreme Court to invalidate parliamentary legislation that is inconsistent with the constitution. But within the framework of constitutional supremacy, the Parliament retains enormous legislative authority, and the government of the day, commanding a parliamentary majority, can effectively translate its political program into law without encountering the institutional obstacles that characterize presidential systems.

Third, the Westminster system operates through a complex web of constitutional conventions, informal understandings about how constitutional powers are to be exercised, that supplement and often effectively override the formal constitutional text. The conventions of collective cabinet responsibility, individual ministerial responsibility, the duty of the Prime Minister to advise the head of state, and the conventions governing the dissolution of Parliament are not, in most cases, written into the constitutional text but are established by practice and tradition. In the British system, where the constitution is entirely uncoded, conventions are the primary constitutional framework. In Bangladesh, where a written constitution provides the formal framework, conventions still play an important role in governing the actual exercise of constitutional powers, and Islam was attentive to this conventional dimension of the constitutional order.

The most fundamental challenge of the Westminster system, and the one that has been most damaging in Bangladesh's specific constitutional experience, is the tension between parliamentary sovereignty and the protection of individual rights and constitutional principles against majoritarian overreach. In a system where the executive controls the legislature through party discipline, where the ruling party's parliamentary majority can be used to pass legislation that overrides constitutional values, and where the courts' power of constitutional review is limited by the scope of the written constitutional rights provisions, the constitutional order is

vulnerable to the accumulation of power by a determined and ruthless executive that is willing to use its parliamentary majority to undermine the constitutional constraints on its power.

This vulnerability is precisely what Bangladesh's constitutional history has repeatedly demonstrated, and it is the central analytical problem that Islam's treatment of the government structure addresses. His analysis of the Parliament, the Cabinet, the President, and the judiciary is organized around this central concern: how to design constitutional structures that will genuinely check executive power in a system where the executive controls the legislature through the mechanism of party discipline.

CHAPTER TWO: THE PARLIAMENT -- POWERS, PROCEDURE, AND THE PROBLEM OF EXECUTIVE DOMINANCE

2.1 The Constitutional Framework of Parliament

Bangladesh's Parliament, the Jatiya Sangsad, is established by Articles 65 to 93 of the Constitution. In its original form, the Parliament was a unicameral body consisting of 300 members directly elected by the people through single-member constituency elections using the first-past-the-post electoral system, together with a number of seats reserved for women that were to be filled by a method of proportional allocation to the parties represented in the elected Parliament. The reserved seats for women have evolved over successive amendments and are currently constituted as 50 additional seats allocated proportionally to the parties on the basis of their share of the general seats.

Article 65(1) vests the legislative authority of the Republic in the Parliament, making it the supreme legislative institution of Bangladesh's constitutional order. Parliament's legislative powers are comprehensive: it may make laws on any subject, subject only to the constraints of the Constitution. The Parliament also exercises financial powers through its control of the budget and public expenditure. It exercises oversight powers through the work of its standing committees and through question time, which in principle gives members the opportunity to hold the government accountable for its actions. And it exercises constituent power through the constitutional amendment process, which gives Parliament (with the requisite supermajority) the authority to amend the constitutional text itself.

The formal powers of Bangladesh's Parliament, as enumerated in the Constitution and analyzed by Islam, are extensive and significant. But the formal powers tell only part of the story, and in many respects the less important part. The crucial question for understanding Bangladesh's parliamentary system is not what powers Parliament formally possesses but whether Parliament actually exercises those powers in a meaningful way, whether it genuinely functions as a legislature, a financial controller, an oversight body, and a representative forum, or whether it has become, as critics and as Islam himself acknowledged, primarily a vehicle for the legitimization of executive decisions that are made elsewhere.

2.2 The Problem of Article 70: Anti-Defection, Party Discipline, and the Destruction of Parliamentary Independence

The single most important structural provision shaping the actual functioning of Bangladesh's Parliament is not one of the powers-granting provisions but a restriction: Article 70, the anti-defection provision that has made Bangladesh's Parliament, in the language that has been used by successive critics including political scientists, judges, journalists, and members of Parliament themselves, little more than a "rubber stamp" for the decisions of the executive.

Article 70 of the Constitution provides that a member of Parliament elected as a candidate of a political party shall vacate his seat if he resigns from, votes in Parliament against the directions of, or abstains from voting in Parliament in defiance of, that party. The consequence of any of these three behaviors is automatic vacation of the parliamentary seat: the member is immediately disqualified, and the seat falls vacant. This is not a matter of party discipline enforced through internal party mechanisms or through the threat of deselection at the next election, as in the British or Indian systems; it is an automatic constitutional sanction, enforced through the constitutional machinery of the Speaker's certification and the Electoral Commission's bye-election, that destroys the parliamentary career of any member who votes according to their conscience rather than according to their party's directive.

The practical consequences of Article 70 for the functioning of Bangladesh's Parliament are devastating. When a party wins a parliamentary majority and forms a government, Article 70 makes it constitutionally impossible for any member of that party to vote against the government's legislation, to support a vote of no confidence, or to abstain on any issue on which the party whip has been applied. The governing party's parliamentary majority, which is the constitutional basis for its claim to executive authority, becomes an impregnable shield against parliamentary accountability. The government knows that as long as it retains its party majority, no member of the legislature can challenge it through the normal mechanisms of parliamentary oversight and accountability.

The historical origin of Article 70, as Islam traced in his constitutional law book, lies in the traumatic experience of floor-crossing, the practice by which members of legislative assemblies in Pakistan switched party allegiance for personal benefit, creating political instability and contributing to the dysfunction of representative institutions in both pre-partition India and post-partition Pakistan. The constitutional framers of 1972, led by Sheikh Mujibur Rahman, incorporated Article 70 to prevent this experience from being repeated in Bangladesh, to ensure that the governing party's parliamentary majority would be stable and its legislative program could be effectively implemented.

But Islam identified, with analytical precision that has been confirmed by decades of constitutional experience, a fatal flaw in this reasoning. The problem that Article 70 was designed to solve, political instability caused by unprincipled floor-crossing for personal gain, is a real problem. But the solution adopted was disproportionate to the problem and destructive of a value far more important than governmental stability: the accountability of the executive to the legislature and through the legislature to the people. By making it constitutionally impossible for members of the governing party's parliamentary majority to vote against the government, Article

70 effectively removed the most important constitutional mechanism for executive accountability in a parliamentary system: the possibility that the legislature would withdraw its confidence from a government that had lost the trust of its parliamentary representatives or that was pursuing policies contrary to the public interest.

The consequences of this constitutional design have been as severe as Islam's analysis predicted. The parliaments elected under Bangladesh's Constitution have, with very few exceptions, functioned as executive approval mechanisms rather than as independent deliberative bodies. Important legislation has been passed with minimal debate and without serious legislative scrutiny. The standing committee system, which in a properly functioning parliament serves as the mechanism for detailed legislative review and executive oversight, has been chronically weak, meeting infrequently and producing reports that are largely ignored. Ministers have not been genuinely accountable to parliamentary questions. And above all, the prime minister of the day has been effectively immune from parliamentary challenge regardless of how the government has performed, because Article 70 ensures that the governing party's majority will remain solid regardless of how unpopular or controversial the government's decisions may be.

Islam's analysis of Article 70 was one of the most important and most critical passages in his constitutional law book. He acknowledged the original justification for the provision, recognized the genuine problem of political instability that it addressed, but argued that the constitutional design had been fundamentally misconceived: that the cure had been worse than the disease, that the attempt to prevent floor-crossing had succeeded in preventing floor-crossing but at the cost of destroying the institutional independence of Parliament and transforming what should have been the supreme legislative body of the Republic into an appendage of the executive.

He proposed several reform options in his analysis, ranging from the complete repeal of Article 70 (which would restore full independence to members of Parliament but might reintroduce the problem of floor-crossing for personal gain) to a graduated approach in which Article 70 would continue to apply for confidence motions and money bills (to preserve governmental stability) but would not apply to ordinary legislation (to restore legislative independence). This graduated approach, which preserves the minimal necessary constraint on parliamentary independence while substantially restoring the Parliament's deliberative and oversight functions, is remarkably similar to the approach adopted in the July Charter of 2025 and confirmed by the referendum of February 2026.

2.3 The Jurisprudence of Article 70: Judicial Treatment and Constitutional Limits

The constitutional validity of Article 70 and the scope of its application have been addressed in a series of judicial decisions that together constitute one of the most politically sensitive bodies of constitutional jurisprudence in Bangladesh's history. The courts have been understandably cautious in approaching a provision that was enacted by the constitutional framers themselves and that has remained in the constitutional text through all subsequent amendments. But the judicial treatment of Article 70 has produced some important constitutional analysis that Islam engaged with extensively in his constitutional law book.

The High Court Division addressed the scope of Article 70 in several cases involving the question of whether particular acts by members of Parliament constituted "voting against" the directions of their party within the meaning of Article 70. The courts generally interpreted this phrase strictly, holding that Article 70 applied only to formal parliamentary votes and not to other acts of parliamentary criticism, dissent, or independent initiative. A member who criticized the government's policies in a speech, wrote a newspaper article disagreeing with the party's position, or refused to attend a party caucus meeting was not acting in defiance of the party's direction within the meaning of Article 70, because Article 70 applied specifically to voting behavior in Parliament. This strict textual interpretation, while narrow in its scope, preserved at least a minimal space for parliamentary independence outside the voting chamber.

The more fundamental constitutional question, whether Article 70 itself was constitutionally valid as a restriction on the freedom of thought, conscience, and speech of members of Parliament, was raised in litigation but never definitively resolved. Article 39(1) guarantees freedom of thought and conscience to every citizen, and members of Parliament are citizens. Article 70's requirement that members vote in accordance with their party's directions, on pain of losing their seats, is a restriction on their freedom of conscience that is imposed not by ordinary legislation but by the Constitution itself. The complex interaction between two constitutional provisions, one that guarantees freedom of conscience and one that restricts the exercise of that freedom for members of Parliament in the context of voting, raises difficult questions about how constitutional provisions are to be reconciled when they are in apparent conflict.

Islam's analysis of this constitutional question was notable for its intellectual honesty about the tension. He did not try to resolve the tension by pretending that it did not exist or by arguing that one provision simply overrode the other. Instead, he analyzed it as a genuine constitutional conflict that reflected the deeper tension between two important constitutional values: the freedom of individual members of Parliament and the stability of the governmental system that depends on party cohesion. He suggested that the proper approach was to interpret Article 70 as narrowly as possible consistent with its text, to preserve the maximum possible space for parliamentary independence, and to treat the provision as a temporary constitutional device that reflected a particular historical moment in Bangladesh's political development rather than as a permanent feature of the constitutional order.

The scholarly consensus in 2025 and 2026 has overwhelmingly concluded what Islam's analysis implied: that Article 70 in its original form was a constitutional error that undermined the foundations of parliamentary democracy, and that the reform proposals of the Constitutional Reform Commission, adopted in the July Charter of 2025 and confirmed by referendum, represent a significant and necessary correction of that error. The relaxation of Article 70 to allow members to vote freely on all issues except confidence votes and money bills, while preserving the basic stability of parliamentary government, is precisely the graduated reform that Islam's framework suggested was the appropriate constitutional solution.

2.4 The Parliamentary Committees: Constitutional Oversight in Practice

The standing committee system is, in any functioning parliamentary democracy, one of the most important mechanisms of legislative oversight and executive accountability. Parliamentary

committees provide the institutional framework for detailed legislative scrutiny, for the examination of government departments and agencies, for the investigation of specific policy questions, and for the production of reports that can influence public debate and government policy. In the Westminster tradition, committees like the House of Commons Public Accounts Committee and the departmental select committees have been among the most effective mechanisms for holding the executive accountable in circumstances where the full chamber, dominated by party discipline, is unable to perform its oversight function effectively.

Bangladesh's constitutional framework establishes a standing committee system through Articles 76 and 77, which require the Parliament to constitute a number of standing committees for the various ministries, as well as special committees for oversight of specific constitutional functions. The Constitution also establishes an Ombudsman under Article 77 (though this office has never been established despite the constitutional mandate, a chronic failure that Islam noted in his constitutional law book with evident frustration).

The practical functioning of Bangladesh's parliamentary committee system has been disappointing. The committees have met infrequently, their proceedings have often been superficial, their reports have rarely influenced government policy in significant ways, and their capacity to summon and question government officials has been inconsistently exercised. The Supreme Court's ruling that it was not answerable to summons from parliamentary committees has further limited the committees' reach. And the dynamics of Article 70 have effectively prevented committee members from the governing party from pursuing investigations that might embarrass the government, even in the committees whose mandate is precisely to provide oversight of government activity.

Islam identified the weakness of the parliamentary committee system as one of the most important structural failures of Bangladesh's constitutional order, and he argued for significant reform of the committee system to strengthen its constitutional mandate, its investigative powers, and its institutional independence. His recommendations, developed through the analytical framework of comparative parliamentary practice, anticipated many of the reform proposals that the Constitutional Reform Commission made in 2025, including the requirement that standing committee chairs be drawn from the opposition (a provision adopted in the July Charter of 2025), and the strengthening of the committees' powers to summon witnesses and compel the production of documents.

2.5 The Financial Powers of Parliament: Budget, Appropriation, and the Allocation of Resources

The Parliament's control of public finance is, in constitutional theory, among its most important powers. The principle that the executive cannot spend public money without legislative authorization is one of the oldest and most fundamental constitutional principles in the Westminster tradition, traceable to the Magna Carta's insistence that taxation required the consent of the community and to the constitutional struggles of seventeenth century England that established parliamentary control of the Crown's finances. In Bangladesh's constitutional framework, the financial powers of Parliament are established in Articles 80 to 92, which require the government to present an annual budget to Parliament for approval, establish the procedures

for appropriation of funds, and create the framework for parliamentary oversight of public expenditure.

The reality of parliamentary financial control in Bangladesh has been, as in the case of legislative oversight more generally, significantly weaker than the constitutional text suggests. Budget debates in Bangladesh's Parliament have typically been perfunctory affairs, in which the opposition raises objections that are invariably voted down by the governing party's majority, and in which the detailed financial scrutiny that effective parliamentary control requires is largely absent. The Public Accounts Committee, which is constitutionally responsible for reviewing the reports of the Comptroller and Auditor General and for holding the government accountable for financial irregularities, has been chronically underpowered and has produced reports that have had limited impact on government financial management.

The constitutional reform proposals of 2025, including the requirement that the Public Accounts Committee be chaired by a member of the opposition (consistent with the British convention) and the strengthening of the Comptroller and Auditor General's office as an independent constitutional institution, address these structural weaknesses directly. Islam's constitutional analysis provides the framework for understanding why these reforms are constitutionally necessary: effective parliamentary financial control is not merely a matter of good governance practice but a constitutional imperative that flows from the fundamental principle that the executive's power over public resources must be subject to legislative authorization and oversight.

CHAPTER THREE: THE PRIME MINISTER AND THE CABINET -- THE CONCENTRATION OF EXECUTIVE POWER AND ITS CONSTITUTIONAL CONSEQUENCES

3.1 The Constitutional Position of the Prime Minister

The Prime Minister of Bangladesh occupies, under the constitutional text and even more emphatically in constitutional practice, a position of extraordinary authority within the governmental system. Articles 55 to 63 of the Constitution establish the framework for the Cabinet system and the Prime Minister's constitutional role, but the constitutional text tells only a fraction of the story of how prime ministerial power actually functions in Bangladesh's political system.

Article 55 establishes the Cabinet, consisting of the Prime Minister and other ministers, as the executive authority of the Republic. Article 56 requires that the Prime Minister be a member of Parliament, that the President act on the advice of the Prime Minister in the exercise of all his functions (except the appointment of the Prime Minister and the Chief Justice), and that the Cabinet be collectively responsible to Parliament. Article 58 establishes that the Cabinet shall consist of not more than one-tenth of the members of Parliament, a provision that limits the size of the Cabinet but that has been rendered less significant by the practice of creating large

numbers of state ministers and deputy ministers who assist the Cabinet without formally being part of it.

The constitutional logic of the Cabinet system, as Islam analyzed it, is one of collective decision-making and collective accountability. The Cabinet, on this model, is not merely the Prime Minister's instrument but a collegiate body in which the most senior ministers of the government participate in the making of major policy decisions. Collective cabinet responsibility, the convention that all cabinet ministers publicly support and defend the government's decisions regardless of their private views, serves both as a mechanism of executive coherence and as a constitutional protection for minority viewpoints within the cabinet: if a minister disagrees profoundly with a government decision, the convention of collective responsibility requires them either to argue their case within the cabinet or to resign. It does not allow them to publicly dissent while remaining in office.

In practice, the collegiate character of cabinet government in Bangladesh has been significantly attenuated by the enormous personal authority of the Prime Minister, who controls the appointment, removal, and promotion of all cabinet ministers, determines the government's legislative program, chairs the cabinet meetings, and effectively decides the most important questions of government policy. This concentration of authority in the hands of the Prime Minister, far from being a constitutional aberration, reflects the structural logic of a system in which the Prime Minister is simultaneously the leader of the majority party, the head of the government, and the primary communicator with the head of state.

Islam's analysis of the Prime Minister's constitutional position was shaped by his awareness of the ways in which this structural dominance could be, and had been, used to undermine the constitutional constraints on executive power. He identified three specific mechanisms through which the Prime Minister's authority could shade into constitutional excess: first, the control of patronage and appointments, which gives the Prime Minister effective authority over a vast range of public institutions and which can be used to fill those institutions with political loyalists rather than independent professionals; second, the control of the parliamentary party, which through Article 70 guarantees that the governing party's parliamentary majority will support the government regardless of the quality of its performance; and third, the ability to initiate constitutional amendments with a supermajority, which in circumstances where a single party holds a large enough majority (as the Awami League did for much of its time in government from 2009 to 2024) allows the Prime Minister to rewrite the constitutional framework itself in ways that serve the government's interests.

Each of these three mechanisms was used systematically by the Hasina government in the period from 2009 to 2024, and Islam's constitutional framework provides the most illuminating analytical lens through which to understand what went wrong. The appointment of political loyalists to the judiciary, the Election Commission, the Anti-Corruption Commission, and other constitutional institutions effectively neutralized these bodies as checks on executive power. The use of Article 70 to prevent any parliamentary challenge to the government's legislative program effectively converted the Parliament into an executive approval body. And the use of the government's parliamentary majority to enact the fifteenth amendment to the Constitution in 2011, which among other changes abolished the non-party caretaker government system and

effectively guaranteed that future elections would be conducted under the incumbent government's supervision, represented the ultimate constitutional entrenchment of executive dominance.

3.2 The Fifteenth Amendment and the Destruction of Electoral Accountability

The fifteenth amendment to Bangladesh's Constitution, enacted in 2011, was the most significant and most damaging constitutional change made by the Hasina government, and it represents the clearest example of the constitutional pathology that Islam's analysis identified as the greatest structural threat to Bangladesh's democratic order: the use of the formal constitutional amendment process, by a government commanding a parliamentary supermajority, to make changes to the constitutional framework that entrench the government's power and eliminate the accountability mechanisms that would otherwise constrain it.

Before the fifteenth amendment, Bangladesh's Constitution provided for the appointment of a non-party caretaker government to oversee general elections during the period between the dissolution of Parliament and the formation of a new government after the election. This caretaker system had been introduced by the thirteenth amendment in 1996, following a political crisis in which the Awami League and other opposition parties had boycotted elections conducted under the incumbent Bangladesh Nationalist Party government on the grounds that the incumbent government would use its control of state resources and institutions to tilt the electoral playing field in its favor. The caretaker system was designed to remove this concern by establishing a politically neutral government, led by the most recently retired Chief Justice of Bangladesh, to supervise the election period.

The caretaker system, despite its imperfections, had been effective in producing elections that were broadly accepted as free and fair in 1996, 2001, and 2008. But the Awami League government, having won a large parliamentary majority in the 2008 election, moved to abolish the caretaker system through the fifteenth amendment, ostensibly on the basis of a Supreme Court judgment (the thirteenth amendment case, decided in 2011) that declared the caretaker system unconstitutional. The Appellate Division's decision in that case was itself deeply controversial and has been criticized by legal scholars as politically motivated, an exercise in judicial accommodation of executive preference that was inconsistent with the court's own previous jurisprudence. Islam's analysis of the thirteenth amendment case, published in his 2012 edition shortly after the decision, was one of the most critical assessments of the Appellate Division's reasoning in the literature.

The consequences of abolishing the caretaker system were precisely as its critics predicted. The elections of 2014, conducted under the incumbent Awami League government without a caretaker framework, were boycotted by the major opposition parties and produced a parliament in which almost half the seats were filled by "elected" candidates who ran unopposed. The elections of 2018, also conducted under the incumbent government, were characterized by widespread allegations of vote-rigging, ballot stuffing, and the suppression of the opposition's ability to campaign freely. The elections of January 2024, which triggered the final crisis, produced a parliament that was overwhelmingly dominated by the Awami League in circumstances that were widely regarded as illegitimate.

The November 2025 judgment of the Appellate Division, which reversed its 2011 decision and declared the caretaker system provisions valid and operative (though with the controversial qualification of prospective application that generated additional controversy), represented one of the most dramatic instances of constitutional reversal in Bangladesh's judicial history. Islam's analytical framework, with its emphasis on the constitutional necessity of structural checks on electoral manipulation and its criticism of judicial accommodation of executive preference, provides the most useful lens through which to understand both the original error of the 2011 judgment and the correction (however belated and procedurally problematic) of the 2025 reversal.

3.3 Prime Ministerial Term Limits and the Constitutional Problem of Long-Duration Power

One of the most important constitutional reform proposals of 2024-2025, and one that responds directly to the pathology of executive dominance that Islam's analysis identified, is the proposal for term limits on the Prime Minister. The Constitutional Reform Commission recommended a two-term limit (subsequently modified in the July Charter to a ten-year cap) on any individual serving as Prime Minister, along with the prohibition on simultaneously holding the offices of Prime Minister, party leader, and leader of the House of Parliament.

The constitutional case for prime ministerial term limits is powerful and is grounded in the basic republican principle that long duration of power is dangerous power. The longer a political leader serves as head of government, the more completely they are able to shape the institutions of the state in their image, to fill key positions with personal loyalists, to build networks of patronage and dependency that make the institutions of accountability increasingly ineffective, and to normalize the exercise of power in ways that progressively marginalize the constitutional constraints that are supposed to limit it. This is not merely a speculative concern; it is precisely what happened during Sheikh Hasina's fifteen-year tenure as Prime Minister from 2009 to 2024.

The comparative constitutional record on executive term limits is instructive. The United States imposed presidential term limits through the Twenty-Second Amendment in 1951, following Franklin Roosevelt's unprecedented four terms in office. Many presidential constitutions around the world now include term limits as a standard constitutional safeguard. But term limits have been less common in parliamentary systems, where the Westminster model generally relies on the mechanism of parliamentary accountability (the possibility of a no-confidence vote removing the Prime Minister) as the primary check on prime ministerial tenure. Bangladesh's experience, in which Article 70 effectively neutralized this parliamentary accountability mechanism, demonstrates why term limits are a particularly important constitutional reform in parliamentary systems where party discipline is constitutionally mandated and parliamentary checks on executive power are correspondingly weakened.

The prohibition on simultaneously holding the offices of Prime Minister and party leader is equally important. One of the structural features of the Hasina government's exercise of power was precisely the fusion of these roles: as both Prime Minister and party leader, Hasina was able to control both the governmental apparatus and the parliamentary party simultaneously, using control of party organization to ensure parliamentary loyalty and using government resources to

reinforce party discipline. The separation of these roles would not eliminate the Prime Minister's influence over the parliamentary party, but it would introduce an important degree of institutional distance between governmental power and party organization that could serve as a modest but meaningful structural check on the concentration of power.

Islam did not explicitly advocate for prime ministerial term limits in his constitutional law book, which predates the most acute phase of Bangladesh's executive dominance problem. But his analytical framework, with its identification of long-duration executive power as a structural threat to constitutional order and its argument for institutional checks on the accumulation of power, provides a strong implicit basis for the term limit proposals. The Constitutional Reform Commission's recommendations in this area, and the July Charter's adoption of a modified version of those recommendations, represent a constitutionally logical development of the principles that Islam articulated.

3.4 Cabinet Responsibility and the Accountability Gap

Collective cabinet responsibility is the convention that holds all ministers of the government jointly accountable for all decisions of the Cabinet, and that requires ministers who dissent from Cabinet decisions to either accept them publicly or resign. Individual ministerial responsibility is the complementary convention that holds each minister personally accountable to Parliament for the administration of their department, and that requires ministers whose departments have committed serious errors or violations of law to account for those errors before Parliament.

These conventions of ministerial accountability are among the most important mechanisms of executive accountability in the Westminster tradition, and their effective functioning is essential to the meaningful exercise of parliamentary oversight. When they work properly, they create a direct chain of accountability from the individual government official through the minister to the Parliament and ultimately to the electorate: errors of administration can be traced to the responsible minister, who must answer for them before Parliament, and who may ultimately be required to resign if the errors are serious enough.

In Bangladesh's constitutional practice, both conventions have functioned very poorly. Individual ministerial responsibility has rarely been enforced: ministers whose departments were involved in corruption scandals, administrative failures, or human rights violations have typically been protected by the Prime Minister and the governing party rather than being required to account for their department's conduct before Parliament. The parliamentary question time and interpellations that are supposed to be the mechanism for enforcing individual ministerial responsibility have been conducted in a manner that allows ministers to evade meaningful accountability through vague answers, claims of official secrecy, and the protection of the majority party's Article 70-enforced parliamentary loyalty.

Islam identified this accountability gap as one of the most important practical failures of Bangladesh's parliamentary system, and he traced it to the structural incentives created by Article 70 and by the Prime Minister's control of ministerial appointments. A minister who knows that their continuity in office depends on the Prime Minister's favor, and that no member of the parliamentary majority will hold them to account because Article 70 prevents any challenging

vote, has virtually no incentive to maintain the standards of accountability that the conventions of ministerial responsibility require.

The reform proposals of the Constitutional Reform Commission, particularly the relaxation of Article 70 and the strengthening of the parliamentary committee system including the requirement that certain committee chairs be drawn from the opposition, address this accountability gap directly. By making it constitutionally possible for members of the governing party to vote against the government on non-confidence and non-financial matters, the reformed Article 70 creates at least the possibility that parliamentary majority members will exercise independent judgment in holding ministers accountable for their departmental conduct.

CHAPTER FOUR: THE CONSTITUTIONAL POSITION OF THE PRESIDENT -- FORMAL POWER, CONVENTIONAL CONSTRAINT, AND CONSTITUTIONAL CRISIS

4.1 The Formal Constitutional Powers of the President

The constitutional position of the President of Bangladesh is one of the most complex and most easily misunderstood aspects of the constitutional order. The President, as established by Articles 47 to 54 of the Constitution, is the head of state of the People's Republic of Bangladesh, elected by Parliament for a term of five years. The President's formal constitutional powers, as enumerated in the Constitution, are extensive and would, if taken at face value, suggest that the President is a figure of substantial executive authority. The President appoints the Prime Minister, on the basis of the person most likely to command the confidence of Parliament; appoints the Chief Justice of Bangladesh, on the advice of the Prime Minister; assents to legislation; and exercises a range of other powers over military appointments, pardons, and other matters.

But the formal constitutional text is profoundly misleading about the actual constitutional position of the President, because Article 48(3) provides that in the exercise of all his functions the President shall act in accordance with the advice of the Prime Minister (except in the appointment of the Prime Minister and the Chief Justice). This provision, which reflects the fundamental design of a parliamentary system in which the executive authority is the Prime Minister rather than the head of state, effectively converts all of the President's formal constitutional powers into ceremonial functions: the President appoints, assents, and exercises authority, but only in accordance with the advice of the Prime Minister who is the real executive authority.

Islam's analysis of the President's constitutional position was careful to distinguish between the formal constitutional text and the constitutional reality created by Article 48(3). He argued that the President's role was not merely ceremonial but that it contained, even within the constraints of Article 48(3), certain spaces of genuine constitutional judgment that were important for the functioning of the constitutional order. The most important of these was the appointment of the Prime Minister: the President has genuine discretion in appointing the Prime Minister in

circumstances where no single party commands a clear parliamentary majority, where the Parliament is evenly divided, or where the election result is genuinely ambiguous. In these circumstances, the President's choice of Prime Minister is not merely a formal act but a constitutionally significant exercise of judgment that can determine the outcome of a constitutional crisis.

The President's ability to act as a constitutional last resort, as a guardian of constitutional order in circumstances where the normal mechanisms of parliamentary accountability have broken down, has been recognized in comparative constitutional analysis but has rarely been effectively exercised in Bangladesh's constitutional practice. The constitutional crises of 2006-2007, when President Iajuddin Ahmed first declared himself caretaker government chief adviser and then declared a state of emergency under military pressure, and of 2024, when President Mohammed Shahabuddin dissolved Parliament on the advice of the army and the outgoing prime minister following the July uprising, illustrate both the importance and the difficulty of the presidential role as constitutional guardian in moments of severe political crisis.

4.2 The Constitutional Role of the President in Constitutional Crisis

The question of how the President should exercise constitutional authority in moments of political crisis, when the normal constitutional mechanisms of parliamentary government have broken down or are being actively subverted, is one of the most difficult and practically important questions in Bangladesh's constitutional order. Islam addressed this question with characteristic analytical care, recognizing that the President's role in a constitutional crisis was not clearly defined by the constitutional text and had to be worked out through the application of constitutional principles and comparative constitutional experience.

The fundamental constitutional problem is this: in a Westminster parliamentary system, the President (or constitutional monarch in the British model) is supposed to act on the advice of the Prime Minister in virtually all circumstances. But there are extreme circumstances in which following the Prime Minister's advice would itself be a violation of constitutional principle: if the Prime Minister advises the President to take unconstitutional action, if there is no lawfully constituted government to provide advice, or if the constitutional order is under direct threat and the mechanisms of parliamentary accountability have been destroyed. In these circumstances, the President's conventional obligation to follow ministerial advice conflicts with the constitutional obligation to uphold the Constitution.

Islam argued that the President's primary duty is not to the Prime Minister but to the Constitution, and that in circumstances of genuine constitutional emergency the President has both the authority and the obligation to exercise independent constitutional judgment to protect the constitutional order. He drew on the comparative experience of constitutional monarchies and presidential systems in which heads of state have intervened to protect constitutional principles against executive overreach: the German Federal President's role as constitutional guardian, the Australian constitutional crisis of 1975 in which the Governor-General dismissed the Prime Minister, and the Indian President's complex role in periods of political uncertainty.

This analysis has been given dramatic practical relevance by the events of 2024-2025. President Mohammed Shahabuddin's dissolution of Parliament following the fall of the Hasina government, and his subsequent role in the constitutional reform process, illustrated both the possibilities and the limitations of presidential action as a constitutional safeguard. The President's dissolution of Parliament and invitation to Professor Yunus to form an interim government was constitutionally controversial, since the normal constitutional provision for an interim caretaker government was no longer in the constitutional text (having been abolished by the fifteenth amendment), and the President's authority to invite a non-parliamentary figure to serve as chief adviser had no clear constitutional basis. But it was accepted as a practical constitutional necessity in the extraordinary circumstances created by the July 2024 uprising, illustrating the broader principle that constitutional interpretation in extreme circumstances must sometimes go beyond the letter of the text to serve its spirit.

4.3 The Enhanced Presidential Powers Proposed in the Constitutional Reform Agenda

One of the distinctive features of the Constitutional Reform Commission's 2025 proposals is the recommendation for enhanced presidential powers, particularly in relation to the appointment of constitutional bodies and the convening of the National Constitutional Council. The Commission recommended that the President should have a broader role in the appointment of certain constitutional institutions, particularly through the National Constitutional Council mechanism, and that the President's ability to exercise independent judgment in constitutional crises should be more clearly defined and supported by the constitutional text.

These proposals represent a significant departure from the Westminster model's traditional minimization of the head of state's role, and they reflect the lessons of Bangladesh's constitutional experience: that in a system where the Prime Minister's power has been effectively unchecked by Parliament (due to Article 70) and where the judiciary and independent commissions have been subject to executive capture (through political appointment processes), the President's constitutional position as an independent constitutional actor could serve as an important additional check on executive dominance.

The enhancement of presidential powers in this limited but significant sense is consistent with Islam's analysis of the President's constitutional role as constitutional guardian. He argued that the President's potential to serve as a check on executive excess was an underdeveloped constitutional resource in Bangladesh, one that had been constrained by both the constitutional text (Article 48(3)) and by the practice of appointing presidents who were political loyalists of the ruling party and who therefore had neither the independence nor the inclination to exercise the presidential powers in a genuinely independent manner.

The July Charter's adoption of enhanced presidential powers, including an expanded role in the National Constitutional Council and clearer authority in constitutional crisis situations, represents an attempt to develop this underdeveloped constitutional resource. Whether the enhanced powers will be effectively exercised will depend critically on the quality and independence of the individuals appointed to the presidential office in the future, a point that Islam's analysis of institutional design would emphasize: constitutional provisions can only be as

effective as the individuals who implement them, and the mechanisms for selecting those individuals are therefore as important as the provisions themselves.

CHAPTER FIVE: THE INDEPENDENCE OF THE JUDICIARY -- APPOINTMENT, TENURE, REMOVAL, AND THE CONDITIONS OF JUDICIAL FREEDOM

5.1 The Constitutional Framework of Judicial Appointment

The independence of the judiciary is, in the analysis of Islam and in the broader tradition of constitutional law, not merely an institutional convenience but a constitutional necessity: it is the prerequisite for meaningful constitutional rights protection and for the effective enforcement of constitutional limits on governmental power. A judiciary that is dependent on the executive for its appointments, promotions, and salaries, that fears for its members' careers if it delivers decisions unfavorable to the government, cannot reliably enforce constitutional rights against the state that has power over the judges' professional lives.

The constitutional framework for judicial appointments in Bangladesh is established in Articles 94 to 99 of the Constitution. The Chief Justice of Bangladesh is appointed by the President, which under Article 48(3) means in accordance with the advice of the Prime Minister. The other judges of the Appellate Division and the High Court Division are appointed by the President after consultation with the Chief Justice. The constitutional text thus establishes a process in which the executive plays the central role in judicial appointments, qualified only by the requirement of consultation with the Chief Justice.

Islam's analysis of the judicial appointment process was one of the most critical and practically important sections of his constitutional law book. He identified the constitutional requirement of presidential appointment on the advice of the Prime Minister as a structural vulnerability: in circumstances where the government appoints judges, there is an inherent risk that the appointment process will be influenced by political considerations, that candidates who are perceived as sympathetic to the government's views or who are connected to the governing party will be preferred over equally or better-qualified candidates who are perceived as independent or critical of the government.

This risk, which Islam identified as a structural concern in his constitutional analysis, was realized in practice in ways that went beyond anything that a neutral constitutional analysis would predict. Successive governments in Bangladesh, and most systematically the Awami League government from 2009 to 2024, used the judicial appointment process as a mechanism for placing political loyalists in the senior judiciary. The supersession of senior judges (the appointment of more junior judges over the heads of more senior colleagues, contrary to seniority conventions) was used repeatedly to ensure that only judges acceptable to the government reached the most senior positions. The result was a judiciary that was, in its most senior ranks, significantly compromised in its institutional independence, and that delivered judgments in politically sensitive cases that were widely criticized as reflecting government preference rather than independent constitutional analysis.

The most dramatic illustration of this dynamic was the thirteenth amendment case of 2011, in which the Appellate Division declared the caretaker government system unconstitutional in a judgment that conveniently supported the Awami League government's desire to abolish the caretaker system and conduct future elections under its own supervision. The judgment's constitutional reasoning was criticized by virtually every independent constitutional scholar who examined it, and its reversal by the Appellate Division's 2025 judgment (by which time the political circumstances had changed) was widely interpreted as a demonstration of the court's accommodation of political power in both directions.

Islam's analysis of judicial independence went beyond the criticism of political interference to develop a framework for the institutional conditions necessary for genuine judicial independence. Drawing on comparative constitutional analysis, he identified several key institutional elements: appointment procedures that minimize political influence, including the involvement of judicial councils or independent advisory bodies in the appointment process; security of tenure, protecting judges from removal except for serious misconduct through an independent process; financial security, ensuring that judges' salaries and allowances are not subject to executive discretion; and administrative independence, giving the judiciary control over its own administrative affairs including the management of court registries and the allocation of cases.

5.2 The Judicial Appointments Commission and Recent Reform

The most important constitutional reform proposal in the domain of judicial independence, adopted in the July Charter of 2025 and endorsed by the February 2026 referendum, is the establishment of a Judicial Appointments Commission (JAC) to oversee the appointment of judges to the Supreme Court. The JAC, as envisioned in the July Charter, would be led by the Chief Justice and would include other members drawn from the judiciary, the legal profession, and civil society, creating an appointment process that is substantially insulated from direct executive control.

The proposal for a JAC represents a significant constitutional departure from the existing framework in which judicial appointments are effectively controlled by the Prime Minister through the constitutional mechanism of advising the President. It draws on the experience of countries that have established judicial appointments commissions, most notably the United Kingdom's Judicial Appointments Commission established by the Constitutional Reform Act 2005, and the similar bodies established in South Africa, Canada, and numerous other jurisdictions that have sought to depoliticize the judicial appointment process.

The additional constitutional proposal, that the senior-most judge of the Appellate Division shall automatically become Chief Justice, addresses the most direct mechanism of political manipulation of judicial appointments: the supersession of senior judges. If the constitutional convention of appointing the most senior eligible judge as Chief Justice is given explicit constitutional force, the government's ability to use the Chief Justice appointment as a political reward or as a mechanism for placing a sympathetic judicial officer in the most senior position will be significantly curtailed.

Islam's constitutional framework provides strong support for both of these reform proposals. His analysis of judicial appointment procedures in comparative perspective consistently emphasized the importance of depoliticizing the appointment process as the most important single institutional reform needed to protect judicial independence in Bangladesh. The JAC proposal, combined with the automatic seniority rule for Chief Justice appointments, represents precisely the kind of institutional restructuring that his analysis pointed toward.

5.3 The Removal of Judges: The Supreme Judicial Council and Its History

The removal of judges is the mirror image of their appointment: just as politicized appointment procedures undermine judicial independence, so does a removal mechanism that is controlled by the executive. A judge who can be removed from office by executive action, or by a parliamentary process controlled by the governing majority, is not truly independent, because the threat of removal creates incentives for judicial accommodation of executive preference that undermine the integrity of the judicial process.

The original 1972 Constitution provided for the removal of Supreme Court judges through an independent body called the Supreme Judicial Council, consisting of the Chief Justice and two senior judges of the Appellate Division, which was empowered to investigate allegations of misbehavior or incapacity against a judge and to recommend removal to the President. This body was subsequently abolished by constitutional amendment, and judges became removable through a parliamentary process in which a resolution supported by a two-thirds majority of Parliament was required. This change, while providing a different and more politically exposed mechanism for judicial removal, was criticized as inadequate because it made judicial removal a parliamentary and therefore political process, potentially allowing governments with parliamentary supermajorities to remove judges whose decisions they disliked.

The fifteenth amendment to the Constitution, enacted by the Hasina government in 2011, restored the Supreme Judicial Council as the mechanism for judicial removal, but critics argued that the restored Council was less independent than it should have been because the executive retained influence over its composition and proceedings. The events of 2024 provided a dramatic illustration of the continuing vulnerability of the judicial removal mechanism: following the July uprising, several judges who had been appointed under the Hasina government came under pressure to resign, and some did so under circumstances that raised questions about the constitutional regularity of their departures from office.

The July Charter of 2025 confirmed the restoration of the Supreme Judicial Council as the primary mechanism for judicial removal and proposed further reforms to strengthen its independence, including clearer procedural rules for its proceedings and provisions for the protection of judges against removal for judgments that displease the executive or the parliamentary majority. These proposals are consistent with Islam's constitutional analysis, which emphasized that the security of judicial tenure was as important as the independence of the appointment process in protecting the conditions for genuine judicial freedom.

5.4 The Separation of the Judiciary from the Executive: Article 22 and Its Implementation

Article 22 of the Constitution, located in Part Two among the fundamental principles of state policy, declares that the state shall ensure the separation of the judiciary from the executive organs of the state. This provision has been in the Constitution since 1972, but its implementation has been partial and protracted, reflecting the deep resistance of the executive to relinquishing control over the lower judiciary.

The most important dimension of judicial-executive separation that Article 22 mandates is the separation of the magistracy from the executive. In Bangladesh's inherited colonial legal structure, the district magistrate exercised both judicial powers (presiding over magistrates' courts in criminal cases) and executive powers (as the head of the district administration). This combination of judicial and executive functions in a single officer who was under the control of the executive violated the most basic principle of judicial independence. The First Class Magistrate who decided a criminal case affecting the interests of the government was the same officer whose career advancement depended on the favor of the executive hierarchy.

The Supreme Court ordered the separation of the judiciary from the executive in the landmark Masdar Hossain case (1999), which directed the government to take specific constitutional and legislative steps to implement Article 22's mandate. The government's compliance with this order was slow and incomplete, and the actual separation was eventually implemented in 2007 after years of delay. But the formal separation of the magistracy from the executive was only the first step: the full implementation of Article 22 required the creation of a comprehensive system of institutional support for the lower judiciary, including administrative independence, financial autonomy, and a service structure that removed judicial officers from executive control.

The Constitutional Reform Commission's 2025 proposals for judicial independence included significant recommendations for the strengthening of the lower judiciary's institutional independence, including the transfer of administrative control of lower courts from the Ministry of Law to a new independent Supreme Court Secretariat, the establishment of a separate judicial service commission for the appointment and promotion of lower court judges and magistrates, and the provision of an independent budget for the judiciary that is not subject to executive discretion. These proposals build directly on the constitutional mandate of Article 22 and on the analytical framework that Islam developed in his treatment of judicial independence.

CHAPTER SIX: THE NATIONAL CONSTITUTIONAL COUNCIL AND THE ARCHITECTURE OF APPOINTMENTS

6.1 The Constitutional Problem of Captured Institutions

One of the most important analytical contributions of Mahmudul Islam's constitutional scholarship was his identification of what might be called the problem of captured institutions: the systematic process by which successive Bangladeshi governments, and most completely the Hasina government of 2009 to 2024, used their control of appointment processes to fill constitutionally independent institutions with political loyalists, thereby converting bodies that

were supposed to provide independent oversight and accountability into instruments of partisan governance.

The institutions most severely affected by this capture process were the Election Commission, which is supposed to be the neutral and independent administrator of elections but which under successive politically influenced appointments became an institution that managed elections in ways favorable to the incumbent government; the Anti-Corruption Commission, which is supposed to independently investigate and prosecute corruption regardless of political affiliation but which was widely perceived as selective in its prosecution of corruption cases, pursuing opposition figures while leaving government-aligned individuals untouched; the judiciary at its senior levels, which as discussed in the preceding chapter was significantly compromised by politically motivated appointments; and the Rapid Action Battalion and other security forces, which were used systematically as instruments of political repression rather than of neutral law enforcement.

Islam's constitutional framework for understanding this problem drew on the concept of institutional capture developed in political science and economics, but he gave it a constitutional dimension: the problem of captured institutions was not merely a governance failure but a constitutional failure, a failure of the constitutional design to provide adequate structural protection against the politicization of constitutionally independent bodies. The constitutional provisions establishing institutions like the Election Commission and the Anti-Corruption Commission were clear about their institutional independence, but the appointment mechanisms through which their members were selected were insufficiently insulated from executive control, allowing successive governments to use the appointment process to undermine the very independence that the constitutional text proclaimed.

6.2 The National Constitutional Council: A New Architecture for Independent Appointments

The Constitutional Reform Commission's most innovative institutional proposal, and the one that most directly addresses the problem of captured institutions, is the establishment of a National Constitutional Council (NCC) as the primary mechanism for making appointments to constitutional bodies. The NCC, as proposed in the Commission's report and as adopted in modified form in the July Charter of 2025, would be a multi-member body composed of representatives of the different branches of government and the political parties, charged with recommending names for appointment to the most important constitutional institutions.

The composition of the NCC as proposed in the Commission's report includes the President, the Prime Minister, the Speaker of the Lower House, the Speaker of the Upper House (in the proposed bicameral system), the Chief Justice, the Leader of the Opposition, and additional members drawn from the parliamentary party representing parties not in the government or the official opposition. This composition is designed to ensure that no single party or government can control the NCC's decisions, that appointments to constitutional bodies will require a degree of political consensus across the major parties, and that the resulting appointments will be more genuinely independent of any single political interest than appointments made exclusively on the Prime Minister's advice.

The NCC proposal draws on institutional models from several comparative constitutional systems. Sri Lanka has a Constitutional Council with a similar multi-party composition for appointments to constitutional institutions. South Africa's Constitution requires the involvement of a Judicial Service Commission in judicial appointments, with a membership drawn from across the political and professional spectrum. Kenya's Constitution establishes a number of independent commissions with appointment processes designed to insulate them from direct political control. And the United States Senate's advice and consent role in the appointment of federal judges, ambassadors, and senior executive officials, while frequently criticized as too political, serves as a mechanism for requiring a degree of bipartisan agreement for major appointments.

Islam did not explicitly propose an NCC-type mechanism in his constitutional law book, but his analytical framework for understanding the problem of captured institutions and his discussion of comparative institutional designs provide the intellectual foundation for the NCC proposal. His emphasis on the importance of appointment processes that are genuinely insulated from single-party control, his critique of the Prime Minister's effective monopoly over the appointment of constitutional bodies, and his argument that genuine institutional independence requires structural protection against political capture all point in the direction of an NCC-type solution.

The practical challenge of the NCC, as identified by constitutional scholars analyzing the July Charter proposals, is the risk that an NCC composed of political representatives might itself become a vehicle for political negotiation and compromise rather than for the selection of genuinely independent candidates. If the political parties that compose the NCC treat its appointment processes as opportunities for proportional sharing of institutional positions, the result may be a different form of political capture (capture by a coalition of parties rather than by a single ruling party) rather than genuine institutional independence. The constitutional design of the NCC must therefore include safeguards against this outcome, including merit-based selection criteria, professional qualification requirements, transparency requirements, and mechanisms for civil society input into the appointment process.

CHAPTER SEVEN: THE BICAMERAL LEGISLATURE -- RATIONALE, DESIGN, AND CONSTITUTIONAL IMPLICATIONS

7.1 From Unicameralism to Bicameralism: The Constitutional Debate

One of the most fundamental structural changes proposed in the constitutional reform agenda of 2024-2026, and one that was endorsed by the referendum of February 2026, is the transformation of Bangladesh's legislature from a unicameral body (the existing single-chamber Jatiya Sangsad) to a bicameral body consisting of a lower house (the National Assembly or Jatiya Sangsad) and an upper house (the Senate or Senat). This proposal represents a major departure from the Westminster tradition in which Bangladesh's constitutional system is rooted, and it raises fundamental constitutional questions about the rationale for bicameralism, the design of the upper house, and the implications of bicameralism for the functioning of parliamentary government in Bangladesh's specific political context.

The case for bicameralism is grounded in several distinct constitutional arguments that have different levels of force in different constitutional contexts. The federalism argument holds that a bicameral legislature is constitutionally necessary in federal systems to provide a chamber that represents the constituent units of the federation (as the United States Senate represents the states and the German Bundesrat represents the Lander). This argument has limited relevance to Bangladesh, which is a unitary state without constituent units that require separate parliamentary representation.

The deliberative argument for bicameralism holds that a second chamber, by requiring legislation to pass through two separate and independently constituted bodies, slows down the legislative process in a way that promotes careful deliberation, prevents hasty legislation, and provides a second opportunity for the identification and correction of errors in the first chamber's work. This argument has some force in the Bangladeshi context, where the combination of Article 70's elimination of genuine parliamentary debate and the government's massive parliamentary majority has allowed legislation to be passed with minimal scrutiny.

The representation argument for bicameralism holds that a second chamber, elected by a different method or representing different constituencies than the first, can provide a form of representation that is not adequately provided by the first chamber. The Constitutional Reform Commission's proposal for a Senate elected by proportional representation, on the basis of votes cast in the lower house election, reflects this representational argument: it would give representation to parties that win significant popular support but few seats in the first-past-the-post lower house election, creating a more representative legislative body overall.

The separation of powers argument for bicameralism holds that a second chamber provides an additional institutional check on the executive and on the first chamber, reducing the risk of executive capture of the legislative process. In Bangladesh's specific constitutional context, where Article 70's anti-defection provisions and the governing party's parliamentary majority effectively eliminate genuine legislative independence in the lower house, a second chamber elected by a different method and with a different composition could provide a meaningful additional check on executive legislation.

7.2 The Design of the Senate: Proportional Representation and Its Constitutional Logic

The July Charter's proposal for a 100-member Senate elected by proportional representation, on the basis of votes cast in the lower house election, represents a specific constitutional design choice with significant implications for the distribution of power in Bangladesh's legislative system. Under this design, the Senate's composition would reflect the distribution of votes in the general election rather than the distribution of seats in the lower house, meaning that parties that won significant popular support but few lower house seats would have substantial Senate representation.

This design choice has important implications for the legislative dynamics of the two-chamber system. A Senate elected by proportional representation from the same general election as the lower house would likely reflect a more diverse political spectrum than the lower house, particularly in circumstances where the first-past-the-post lower house election produced a very

unequal translation of votes into seats. If the governing party won a large lower house majority with, say, 50% of the vote, but won 70% or more of the lower house seats (as commonly happens with first-past-the-post systems), the proportional representation Senate would give the remaining 50% of voters, who may be distributed across multiple parties, a much larger share of Senate representation than they received in the lower house.

This difference in composition would create a natural tension between the two chambers that could serve as a constitutional check on the executive's legislative program. The governing party, commanding a large lower house majority, would still need to negotiate with other parties in the Senate (where it might have a proportional share close to 50% rather than a commanding majority) to pass legislation that required Senate approval. This negotiation requirement would introduce a degree of legislative deliberation and compromise that the unicameral system had failed to provide.

The constitutional design question of what the Senate can and cannot do is equally important. The July Charter proposed that the Senate would be a "revising chamber" that could review laws passed by the lower house but could not permanently block them, creating a structure similar to the British House of Lords after its reform, in which the upper chamber has a power of delay but not of veto over ordinary legislation. This design preserves the principle of parliamentary government (the executive answers to the lower house) while adding a deliberative check on hasty legislation.

For constitutional amendments, however, the July Charter proposed that Senate approval would be required, and that a majority of the Senate would need to support a constitutional amendment for it to pass. This provision, if implemented, would significantly strengthen the protection of the constitutional framework against majoritarian overreach: a governing party with a lower house supermajority could not unilaterally amend the Constitution if it could not command a similar majority in the proportional representation Senate.

7.3 The Theoretical Debate on Semi-Parliamentarism and Bangladesh's Bicameral Choice

The academic literature on comparative legislative institutions has produced an important theoretical debate about the implications of different bicameral designs for the stability and quality of democratic governance, and this debate has direct relevance to the constitutional choices that Bangladesh is making in the reform process of 2024-2026. The most influential recent contribution to this debate is Steffen Ganghof's theory of semi-parliamentary government, which has been explicitly invoked in the Bangladeshi constitutional reform discussion.

Ganghof's model of semi-parliamentarism proposes a dual-chamber system in which a lower house elected by majority rule and an upper house elected by proportional representation share legislative power, but with important differences in their relationship to the executive. In Ganghof's model, the executive answers primarily to the lower house (preserving the core logic of parliamentary government), but the upper house provides a check on executive legislation through its role in the legislative process. The "semi" in semi-parliamentarism refers to the fact that the system is not purely parliamentary (because the upper house limits executive dominance

over legislation) but also not presidential (because the executive still answers to the lower house).

The Constitutional Reform Commission's analysis explicitly engaged with Ganghof's model and drew on it in developing the bicameralism proposal. But the Commission's adaptation deviated from Ganghof's ideal in significant ways, most notably in the indirect nature of the Senate's election (Senators being allocated on the basis of lower house vote shares rather than elected in a separate election). This deviation, while making the institutional design more administratively manageable, reduces the Senate's independent democratic legitimacy relative to Ganghof's ideal and creates potential questions about the Senate's constitutional authority to check the lower house.

Constitutional scholars analyzing the July Charter's bicameral proposals have identified several additional design challenges that will need to be addressed in the implementation process. The absence of staggered Senate terms (in the proposed design, both chambers serve the same four-year term), which means that a governing party sweeping both the lower house and the Senate in a single election could still enjoy legislative dominance across both chambers, reduces the check that bicameralism is supposed to provide. The lack of a clear mechanism for resolving deadlocks between the two chambers, which could produce legislative gridlock if the two chambers are controlled by different parties or coalitions, raises practical concerns about governability. And the risk of elite capture of the Senate through the party-controlled allocation of proportional representation seats, which could reproduce at the upper house level the same party discipline problems that Article 70 creates at the lower house level, requires careful attention to the Senate's internal rules and conventions.

CHAPTER EIGHT: THE CARETAKER GOVERNMENT SYSTEM -- CONSTITUTIONAL HISTORY, JUDICIAL TREATMENT, AND REFORM

8.1 The Constitutional Problem of Electoral Oversight

The problem of conducting free and fair elections in a parliamentary system where the incumbent government controls the state apparatus is one of the most important and most difficult constitutional problems in developing democracies, and it has been particularly acute in Bangladesh's constitutional history. The institutional framework for electoral oversight has been one of the most contested dimensions of Bangladesh's constitutional order, and its evolution from the original 1972 framework through the caretaker system of 1996 to its abolition in 2011 and its restoration through the 2025 judgment and the July Charter referendum of 2026 represents one of the most dramatic constitutional trajectories in the country's history.

The problem is structural: in a parliamentary system, the incumbent government is formed by the party that commands a parliamentary majority. That government controls the civil service, the police, the military, the media regulatory apparatus, and the administrative machinery of the state. All of these resources can be, and in Bangladesh's experience consistently have been, deployed to give the incumbent party an advantage in the electoral contest. This structural

advantage is not unique to Bangladesh; it is a recognized problem in electoral administration globally, and various constitutional mechanisms have been developed in different jurisdictions to address it.

The caretaker government system, introduced by Bangladesh's thirteenth constitutional amendment in 1996, was a distinctive constitutional solution to this problem. Instead of relying on an independent election commission alone to ensure electoral fairness, the thirteenth amendment established the requirement that elections be conducted under a non-party caretaker government, composed of politically neutral technocrats and led by the most recently retired Chief Justice of Bangladesh, that would govern during the electoral period from the dissolution of Parliament to the formation of a new government after the election. This arrangement effectively removed the incumbent government from power during the most politically sensitive period, eliminating the most direct mechanisms of electoral manipulation.

8.2 The Thirteenth Amendment Case -- A Judicial Error of Constitutional Significance

Islam's treatment of the thirteenth amendment case in his 2012 constitutional law book was the most directly critical assessment of a specific judicial decision in his entire oeuvre, reflecting the seriousness with which he viewed what he saw as a fundamental error in constitutional reasoning with potentially devastating consequences for Bangladesh's democratic order.

The Appellate Division's judgment in the thirteenth amendment case (decided in 2011) held that the caretaker government system was unconstitutional because it violated the principle of democracy embedded in the Constitution: the Constitution required that the government be responsible to Parliament, and a non-elected caretaker government was inconsistent with this requirement. The judgment was delivered at the specific request of the Awami League government, which had petitioned the Appellate Division to rule on the constitutionality of the thirteenth amendment, and which welcomed the judgment as providing constitutional justification for its plan to abolish the caretaker system through the fifteenth amendment.

Islam's critique of this judgment was systematic and devastating. He argued, first, that the Appellate Division had misunderstood the constitutional principle of democratic government: democracy does not require that the government of the day command a permanent parliamentary majority, but that elections be conducted in a manner that genuinely reflects the will of the people. A constitutional arrangement that ensures electoral fairness by removing the incumbent government from power during the electoral period is not anti-democratic; it is a protection of the democratic process against the subversion that would otherwise occur through the incumbent's use of state power to manipulate the election.

He argued, second, that the judgment ignored the practical reality that had made the caretaker system constitutionally necessary in Bangladesh: the systematic use of state power by incumbent governments to tilt the electoral playing field. The caretaker system was not an ideal constitutional design; it was a practical response to a demonstrated constitutional problem. To invalidate it without providing any alternative mechanism for addressing that problem was not a principled constitutional judgment but a constitutional abdication.

He argued, third, that the judgment failed to engage seriously with the basic structure doctrine, which the Appellate Division had itself developed in the Anwar Hossain Chowdhury case of 1989. If free and fair elections are part of the basic structure of Bangladesh's Constitution (and they surely are, since democracy is explicitly stated as a fundamental constitutional principle), then constitutional amendments that undermine the conditions for free and fair elections may not be valid regardless of the parliamentary process through which they were enacted.

The November 2025 judgment of the Appellate Division, which reversed the 2011 decision and declared the caretaker government provisions valid and operative, confirmed the substance of Islam's critique even while creating procedural complications through its prospective application. The remarkable spectacle of the court's highest body reversing itself on a question of fundamental constitutional significance within fourteen years, with no change in the constitutional text but a radical change in the political circumstances, raised serious questions about the consistency and principled character of Bangladesh's highest court's constitutional adjudication. These questions, which Islam had identified as central concerns of constitutional jurisprudence long before the events of 2025, illustrate why the institutional independence of the judiciary, analyzed in Chapter Five, is so important for the quality and integrity of constitutional adjudication.

CHAPTER NINE: THE CONSTITUTIONAL AMENDMENT PROCESS AND THE BASIC STRUCTURE DOCTRINE

9.1 Formal Amendment: The Requirements and Their Significance

The constitutional amendment process is one of the most important structural features of any constitutional order, because it determines the conditions under which the constitutional framework itself can be changed. A constitution that is too easy to amend offers little structural protection for its provisions: a government commanding a temporary parliamentary majority can rewrite the constitutional framework in its interests without encountering significant constitutional obstacles. A constitution that is too difficult to amend becomes rigid and unable to adapt to changing social, political, and economic circumstances. The challenge of constitutional design is to establish an amendment process that is demanding enough to protect the constitutional framework against opportunistic manipulation but flexible enough to allow necessary adaptation.

Bangladesh's Constitution establishes an amendment process in Articles 142 and 143. Article 142 provides that a bill to amend any provision of the Constitution may be introduced in Parliament, and that such a bill shall be deemed to have been passed if it receives the votes of not less than two-thirds of the total number of members of Parliament. The President must assent to the bill, and (for certain specified provisions) the bill must also be ratified by referendum. The two-thirds supermajority requirement is more demanding than the simple majority needed for ordinary legislation but less demanding than the constitutional amendment processes in some other systems, such as the United States, which requires two-thirds of both chambers of Congress plus ratification by three-fourths of the states.

In the context of Bangladesh's constitutional history, the two-thirds supermajority requirement has proved insufficient to protect the constitutional framework against manipulation by governments commanding sufficiently large parliamentary majorities. The Awami League's 2008 election victory gave it a two-thirds majority in the Parliament, which it used to enact the fifteenth amendment in 2011, making fundamental changes to the constitutional order that were widely criticized as violating the basic principles of democratic constitutional governance. The ability of a single party to obtain a supermajority in the lower house, in circumstances where the electoral system converts a majority of votes into a parliamentary supermajority of seats, means that the two-thirds requirement is not as strong a protection as it might appear.

9.2 The Basic Structure Doctrine: Constitutional Limits on Constitutional Amendment

The most important constitutional development in the jurisprudence of constitutional amendment is the basic structure doctrine, first articulated by India's Supreme Court in the landmark *Kesavananda Bharati* case (1973) and subsequently adopted by Bangladesh's own Appellate Division in the *Anwar Hossain Chowdhury* case (1989) and the Fifth Amendment case (2010). The basic structure doctrine holds that certain features of a constitution are so fundamental to its identity as a constitutional order that they cannot be validly amended even through the formal constitutional amendment process. Even a constitutional amendment that has been passed by the required supermajority and that complies with all the procedural requirements of the amendment process will be invalid if it destroys a feature that belongs to the basic structure of the constitution.

The basic structure doctrine is one of the most philosophically rich and jurisprudentially significant innovations in modern constitutional law. It represents a judicial assertion that the constitution has a core that is not subject to legislative or even constituent power acting through the normal amendment procedures, that there are certain constitutional fundamentals that are, in the language of natural law theory, beyond the reach of any temporal authority. This claim, which is not explicitly grounded in the constitutional text of any known constitution but which has been derived by courts from the overall structure and spirit of the constitution, has been enormously influential in South Asian constitutional jurisprudence and increasingly in comparative constitutional law globally.

Islam was a strong advocate of the basic structure doctrine in Bangladesh's constitutional context, and his constitutional law book contains one of the most systematic and philosophically developed analyses of the doctrine in the Bangladeshi legal literature. He identified the elements that he considered to belong to Bangladesh's constitutional basic structure, including the supremacy of the Constitution, the republican and democratic character of the state, the separation of powers, the independence of the judiciary, the rule of law, the protection of fundamental rights, the parliamentary system of government, and the unity and territorial integrity of the republic. Each of these elements, in his analysis, could not be validly abrogated by constitutional amendment regardless of the parliamentary support the amendment commanded.

The practical importance of the basic structure doctrine for Bangladesh's constitutional history cannot be overstated. Without it, the fifth amendment (which ratified the martial law

proclamations and changes of 1975 to 1979), the seventh amendment (which ratified Ershad's martial law proclamations), and the fifteenth amendment (which abolished the caretaker government system) would all have been constitutionally unassailable regardless of their substantive inconsistency with the democratic and rights-protecting principles of the Constitution. The basic structure doctrine provides the constitutional basis for the Appellate Division's invalidation of the fifth amendment in the Fifth Amendment case of 2010, and for the potential future invalidation of other constitutional amendments that violate the basic structure.

The Constitutional Reform Commission's 2025 recommendation for the repeal of Articles 7A and 7B, which had been introduced by the Hasina government to constitutionally entrench certain provisions against amendment, reflects a nuanced engagement with the basic structure doctrine. Articles 7A and 7B represented an attempt to constitutionally protect specific institutional arrangements against amendment, going beyond the protection of genuine constitutional fundamentals. The Commission's recommendation that the basic structure protection should rest on the judiciary's application of the doctrine rather than on explicit textual rigidity is consistent with Islam's understanding of how constitutional protection should work: through principled judicial interpretation rather than through the artificial rigidity of specific constitutional provisions.

9.3 The Referendum as Constitutional Device: Legal Force, Popular Legitimacy, and Constitutional Limits

The constitutional reform process of 2024-2026 has introduced a new constitutional mechanism into Bangladesh's constitutional landscape: the referendum as a device for authorizing constitutional change. The February 2026 referendum, in which 61% of voters endorsed the July Charter's reform proposals, represents the first constitutional referendum in Bangladesh's history (the 1977 presidential confidence referendum was a different kind of exercise), and its constitutional status has been deeply contested.

The constitutional controversy over the referendum centers on a fundamental question: what is the legal status of the popular endorsement expressed through a referendum in a constitutional system that does not explicitly provide for referendums as a mechanism of constitutional change? Article 142 of Bangladesh's Constitution provides for amendment by parliamentary supermajority and, for specified provisions, by parliamentary supermajority plus referendum. But the July Charter's referendum was not conducted under Article 142; it was conducted under a presidential implementation order that claimed constitutional authority on the basis of "popular sovereignty" and "the sovereign will of the people" expressed through the July 2024 uprising.

Islam's constitutional framework, with its emphasis on the supremacy of the written constitution and the need for constitutional change to proceed through legally authorized mechanisms, would be deeply skeptical of the claim that a referendum conducted outside the constitutional amendment framework creates legally binding constitutional changes. He would acknowledge the political and moral force of a popular mandate expressed through referendum, but he would distinguish between political force (which can create pressure on the legislature to act) and legal force (which requires a constitutional basis for the change being made). The proper role of the February 2026 referendum, on this analysis, was to provide a political mandate for the newly

elected Parliament to implement the constitutional reforms through the amendment process of Article 142, rather than to itself effect those changes.

This is broadly the position that the BNP, which won the February 2026 election with a two-thirds parliamentary supermajority, has taken in the immediate post-election period: acknowledging the political mandate of the referendum while committing to implement the constitutional changes through the formal constitutional amendment process. The constitutional challenge that the Supreme Court has admitted for hearing, questioning the constitutional validity of the Presidential Implementation Order of November 2025, adds a judicial dimension to this constitutional controversy that may result in important clarifying judgments about the respective roles of popular referendums and constitutional amendment procedures in Bangladesh's evolving constitutional order.

CHAPTER TEN: THE POST-2024 REFORM AGENDA FOR GOVERNMENT STRUCTURE -- COMPREHENSIVE ANALYSIS AND CONSTITUTIONAL ASSESSMENT

10.1 The Constitutional Reform Commission's Structural Proposals: A Systematic Analysis

The Constitutional Reform Commission's January 2025 report contains the most comprehensive set of proposals for reforming the structure of Bangladesh's government since the founding of the republic. These proposals, taken together, would transform the constitutional architecture of the state in ways that address many of the structural weaknesses that Mahmudul Islam's constitutional scholarship identified. Analyzing these proposals systematically, assessing their constitutional foundations, comparing them with the analytical framework that Islam developed, and identifying the remaining gaps and challenges, is the essential task of this concluding chapter.

The Commission's structural proposals can be organized around five main themes: the reform of the legislature (bicameralism, Article 70 reform, strengthening of committees), the reform of executive accountability (prime ministerial term limits, separation of Prime Minister and party leader roles, NCC for appointments), the reform of the judiciary (Judicial Appointments Commission, seniority rule for Chief Justice, Supreme Court Secretariat), the reform of constitutional commissions (Human Rights Commission, Election Commission, Anti-Corruption Commission, Public Service Commission, and Local Government Commission), and the reform of the constitutional amendment process (requirements for constitutional change, relationship between referendum and parliamentary amendment).

The bicameralism proposal, analyzed in detail in Chapter Seven, addresses the structural problem of executive dominance over the legislature by introducing a second chamber that would not be subject to the same first-past-the-post distortions as the lower house and that would therefore provide a more genuinely representative check on executive legislation. Its success in achieving this constitutional purpose will depend critically on the detailed design of the Senate's powers, its composition rules, its relationship with the lower house, and its internal rules of procedure.

The Article 70 reform, discussed at length in Chapter Two, addresses what Islam identified as the most fundamental structural flaw in Bangladesh's parliamentary system: the constitutional entrenchment of executive dominance through the prohibition of free parliamentary voting. The proposed relaxation of Article 70 to allow free voting on all matters except confidence votes and money bills is a significant constitutional improvement, though constitutional scholars have argued that even this relaxation may not be sufficient to overcome the deep culture of party discipline that Article 70 has fostered over fifty years of constitutional practice.

The prime ministerial term limits and the prohibition on simultaneously holding Prime Minister and party leader positions address the specific pathology of long-duration executive dominance that Bangladesh's constitutional history has demonstrated. These reforms, while not preventing the concentration of executive power in the short term, establish constitutional constraints that will prevent the kind of long-duration institutional capture that occurred during the Hasina government's fifteen-year tenure.

The National Constitutional Council for appointments addresses the structural problem of captured institutions by introducing a multi-party appointment mechanism that is substantially insulated from single-party executive control. The success of this mechanism will depend on the NCC's composition, its decision-making procedures, and the constitutional and legal standards it applies in making appointment recommendations.

The Judicial Appointments Commission addresses the specific problem of executive control of judicial appointments, which Islam identified as the most important single threat to judicial independence in Bangladesh. The JAC, combined with the automatic seniority rule for Chief Justice appointments and the Supreme Court Secretariat for judicial administration, represents the most comprehensive package of judicial independence reforms in Bangladesh's constitutional history.

10.2 What Islam's Framework Tells Us About the Reform Agenda

Mahmudul Islam's constitutional scholarship provides the most useful analytical framework for assessing the constitutional reform agenda of 2024-2026, both because his analysis of Bangladesh's constitutional weaknesses has been consistently validated by subsequent events and because his comparative constitutional framework provides the conceptual tools for evaluating the proposed reforms against the standards of constitutional best practice.

From the perspective of Islam's constitutional philosophy, the reform agenda represents a significant and necessary step toward the realization of Bangladesh's constitutional aspirations, but it leaves some important questions unresolved and some important weaknesses unaddressed.

The reforms are most clearly successful in addressing the structural concentration of executive power that Islam identified as the most dangerous feature of Bangladesh's constitutional order. The combination of bicameralism, Article 70 reform, prime ministerial term limits, and NCC appointments creates a significantly different constitutional environment than the one that allowed the Hasina government to achieve the degree of institutional capture it did. The

structural checks on executive dominance are substantially stronger in the reformed system than in the pre-2024 constitutional framework.

The reforms are less clearly successful in addressing what Islam identified as the deeper cultural and institutional conditions that determine whether constitutional provisions are genuinely respected. Constitutional texts can be changed; constitutional cultures change far more slowly. The culture of executive dominance that has developed over fifty years of constitutional practice under Article 70 will not automatically transform into a culture of genuine parliamentary independence merely because Article 70 has been relaxed. The culture of judicial accommodation of executive preference that developed under politically influenced appointment processes will not automatically transform into genuine judicial independence merely because the appointment process has been reformed. The culture of institutional capture that has characterized Bangladesh's constitutional history will require sustained institutional effort and constitutional commitment to overcome, even within a reformed constitutional framework.

This is not a reason for pessimism about the reforms, but it is a reason for realism about what constitutional text reform can accomplish on its own. The reforms create the necessary structural conditions for a genuinely democratic, rights-protecting, and constitutionally constrained governmental system; they do not by themselves guarantee that those conditions will produce the outcomes they are designed to produce. That guarantee, if it can ever be given, depends on the quality of the individuals who populate the reformed institutions, the vigilance of civil society in monitoring constitutional compliance, the development of constitutional legal culture throughout Bangladeshi society, and the commitment of successive governments to honor the constitutional constraints on their power even when those constraints are inconvenient.

10.3 The Legitimacy of Constitutional Change and the Role of the New Parliament

The February 2026 election produced a BNP-led government with a two-thirds parliamentary supermajority, creating the constitutional capacity to implement the constitutional amendments that the reform agenda requires. The BNP's commitment to the July Charter's reform proposals, while subject to the proviso that it dissented from certain specific provisions, provides a political foundation for the implementation of constitutional change through the formal amendment process. The constitutional challenge pending before the Supreme Court, questioning the validity of the Presidential Implementation Order, adds judicial oversight to the political process of constitutional reform.

Islam's constitutional framework for understanding the legitimacy of constitutional change emphasizes two requirements: that change proceed through constitutionally authorized mechanisms, respecting both the formal requirements of the amendment process and the substantive limits of the basic structure doctrine; and that change be made in ways that genuinely reflect the constitutional aspirations of the political community rather than the momentary interests of the party in power. The first requirement points to the importance of the BNP government's stated commitment to implementing reforms through the Article 142 amendment process rather than relying on the constitutionally questionable authority of the Presidential Implementation Order. The second requirement points to the importance of maintaining broad political consultation and consensus in the implementation process, ensuring that the reforms

adopted reflect the constitutional vision articulated in the July Charter rather than being modified in ways that serve the newly governing party's interests.

The most important constitutional question in Bangladesh's immediate political future is whether the BNP, which has now returned to power after seventeen years in opposition with the memory of the constitutional abuses of the Hasina era fresh in its institutional consciousness, will prove more willing than its predecessors to respect the constitutional constraints on executive power, to honor the independence of the institutions that are supposed to check that power, and to implement the structural reforms that will make Bangladesh's constitutional order genuinely protective of democratic governance and human rights. The answer to that question will be the most important test of whether the constitutional reform agenda of 2024-2026 has succeeded in its fundamental purpose: not merely to change the constitutional text but to transform the constitutional culture that determines whether the text is given the life it deserves.

CHAPTER ELEVEN: CONSTITUTIONAL CONVENTIONS AND UNWRITTEN RULES IN BANGLADESH'S PARLIAMENTARY SYSTEM

11.1 The Role of Constitutional Conventions in the Westminster System

In any constitutional system derived from the Westminster parliamentary tradition, the written constitutional text provides only part of the constitutional framework. The other part, often equally important in determining how constitutional powers are actually exercised, consists of constitutional conventions: the informal understandings, practices, and expectations that have developed over time and that govern the exercise of constitutional powers in ways that the formal text does not explicitly specify.

Constitutional conventions are distinguished from mere political practices by the fact that they are understood by the relevant constitutional actors to be obligatory: they are not merely what usually happens but what is constitutionally required to happen. The obligation is not legally enforceable in the same way as a statutory or constitutional provision, but it is constitutionally real: violating a constitutional convention is understood as a constitutional wrong, even if there is no court that can provide a legal remedy for the violation.

Islam's treatment of constitutional conventions in his constitutional law book was notable for its sophistication and for its practical focus. He identified the major constitutional conventions that govern Bangladesh's Westminster-style parliamentary system, including the convention that the President will appoint as Prime Minister the person who commands the confidence of the lower house majority; the convention of collective cabinet responsibility; the convention of individual ministerial responsibility; the convention that the President acts on the Prime Minister's advice in all matters except the appointment of the Prime Minister and the Chief Justice; the convention of parliamentary privilege; and various conventions governing the conduct of parliamentary business.

He also identified, with evident concern, several cases where constitutional conventions had broken down in Bangladesh's practice: cases where presidents had exercised personal discretion in circumstances where convention required them to follow ministerial advice; cases where cabinet ministers had publicly dissented from government decisions without resigning; cases where the parliamentary process had been used in ways that violated the spirit of parliamentary convention even while formally complying with the letter of constitutional provisions.

The breakdown of constitutional conventions is as significant for constitutional order as the violation of formal constitutional provisions, because conventions fill the gaps that the formal text leaves, providing the framework within which the formal constitutional machinery is supposed to operate. When conventions break down, the formal constitutional text is not sufficient by itself to maintain the constitutional order; the machinery of government loses its lubricant and begins to grind.

11.2 The Codification Question: Should Conventions Be Written Into the Constitutional Text?

One of the most important constitutional design questions raised by the reform agenda of 2024-2026 is whether certain constitutional conventions that are currently unwritten should be codified in the constitutional text. The argument for codification is that written provisions are more clearly obligatory and more legally enforceable than unwritten conventions; by giving constitutional text to conventions, the reform process can create stronger and more reliable constitutional protections for the practices that the conventions are supposed to mandate.

The argument against codification is that conventions derive their force from their status as shared understandings among constitutional actors, not from any formal legal authority, and that attempting to codify them may reduce their flexibility and adaptability to changed circumstances. Moreover, codified conventions become subject to the formal requirements of constitutional amendment, which may make it more difficult to update or modify them as the constitutional order evolves.

Islam's position on this question, derived from his comparative constitutional analysis, was nuanced. He recognized the appeal of codification as a mechanism for strengthening constitutional conventions in an environment where political actors could not be relied upon to voluntarily observe unwritten norms. But he also recognized the risks of codification, particularly the risk of freezing constitutional practice in a form that may not be optimal for future circumstances. His overall approach was to favor codification for the most important and most frequently violated conventions, while leaving room for the survival and development of unwritten conventions in areas where the formal text did not need to reach.

The July Charter of 2025 reflects this nuanced approach in several important ways. It codifies the convention of prime ministerial accountability to Parliament by explicitly providing for the possibility of no-confidence votes, and it codifies the convention of judicial seniority in Chief Justice appointments by giving it constitutional expression. But it leaves many other conventions uncoded, relying on the political culture of the new constitutional order to maintain them as effectively as the formal text maintains the provisions it does contain.

CONCLUSION TO PART THREE: THE ARCHITECTURE OF POWER AND THE CONSTITUTIONAL FUTURE

The Structural Reform Challenge and Islam's Analytical Legacy

As we conclude this third part of the textbook, devoted to the architecture of state power and the constitutional framework of separation of powers in Bangladesh, the central theme that emerges from the analysis is the extraordinary gap between constitutional aspiration and constitutional reality that has characterized Bangladesh's governmental structure throughout most of its history, and the ambitious but uncertain attempt to close that gap through the constitutional reform agenda of 2024-2026.

Mahmudul Islam's constitutional scholarship is the most important analytical resource for understanding this gap and for assessing the reform agenda. His analysis of Article 70 as the fundamental structural flaw in Bangladesh's parliamentary system, his critique of executive dominance over judicial appointments and constitutional commissions, his assessment of the caretaker government system and its judicial treatment, his development of the basic structure doctrine as a constitutional limit on constitutional amendment, and his comparative analysis of the institutional designs that have protected constitutional principles in other democratic systems: all of these analytical contributions remain essential reading for anyone seeking to understand Bangladesh's constitutional reform challenges.

The constitutional reform agenda of 2024-2026, as analyzed in this part of the textbook, addresses the most important of the structural weaknesses that Islam identified, and it does so in ways that are broadly consistent with the analytical framework that he developed. The proposed reforms are not perfect, they contain design challenges and implementation uncertainties that will require sustained constitutional attention in the years ahead, but they represent the most serious and the most comprehensive attempt in Bangladesh's history to construct a constitutional framework in which the structural conditions for genuine democratic governance, effective rights protection, and accountable executive power are genuinely present.

Whether that attempt will succeed depends on factors that lie beyond the constitutional text: on the political will of the governing party to honor constitutional constraints when those constraints are inconvenient, on the institutional culture of the judiciary and the independent commissions, on the development of civil society's capacity to monitor constitutional compliance and hold institutions accountable, and on the gradual transformation of the political culture in which the constitutional order operates. These are not merely institutional questions but questions of character, of civic virtue, of the disposition to treat constitutional obligations as genuine obligations rather than as obstacles to be circumvented when the opportunity arises.

Mahmudul Islam's legacy is relevant here too, not merely as an analytical framework but as a professional and civic example. He was a constitutional lawyer who took seriously the obligations of his profession, who brought the full power of his intellectual gifts to the service of constitutional principle rather than political convenience, and who maintained his commitment to

constitutional integrity through decades of professional life in an environment where the temptations to accommodation were constant and the costs of independence were real. In this sense, his legacy is not merely a body of constitutional doctrine but a model of constitutional character, and it is that character, as much as the doctrines, that Bangladesh's constitutional future most needs.

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End of Part Three. Part Four of this textbook will examine the constitutional economy of Bangladesh: the constitutional framework for economic governance, property rights, labour rights, the regulation of markets, the constitutional dimensions of development policy, and the relationship between the constitutional order and the patterns of economic inequality and social vulnerability that characterize Bangladesh's economic and social landscape. Mahmudul Islam's treatment of economic constitutional law will be placed in the context of the global debate about the constitutional foundations of economic justice and the emerging jurisprudence of economic rights that has developed across the common law world in the decades since his final edition.

PART FOUR

THE CONSTITUTIONAL ECONOMY: PROPERTY, LABOUR, MARKETS, AND THE JURISPRUDENCE OF ECONOMIC JUSTICE

A Preface to Part Four: Why the Constitution Speaks to the Economy

There is a powerful and persistent temptation, felt most acutely in legal systems shaped by the British common law tradition, to draw a firm line between the constitutional and the economic, to insist that a constitution governs the organization of political power while the economy is the domain of markets, statutes, and administrative regulation. This temptation has deep intellectual roots. It draws sustenance from the classical liberal tradition associated with John Locke, Adam Smith, and their successors, which tended to imagine a pre-political economic order grounded in natural property rights that the state was obliged to protect rather than to shape. It draws further sustenance from the twentieth-century positivist tradition in constitutional law, which associated

constitutionalism with civil and political rights and regarded claims about economic entitlements as matters for ordinary legislation rather than fundamental law. And it draws sustenance, more prosaically, from the practical convenience of those economic actors who benefit from existing distributions of wealth and who have every reason to prefer that the constitution be understood as protecting the status quo rather than mandating its transformation.

Mahmudul Islam was not naive about these intellectual and political forces. He was a lawyer of sufficient sophistication to understand why the distinction between civil-political rights and economic-social rights had been built into the architecture of Bangladesh's 1972 Constitution, and why that distinction reflected not merely a technical design choice but a deeper uncertainty within the constitutional tradition about whether courts were the appropriate institutions to adjudicate claims rooted in the distribution of economic resources. He was also, however, a constitutional scholar of sufficient depth to understand that the distinction between the political and the economic was itself a constitutional choice, one that embedded particular assumptions about the nature and purpose of constitutional government, and that those assumptions were not beyond question.

This fourth part of our textbook addresses the constitutional economy of Bangladesh through the analytical lens that Mahmudul Islam developed in his work. It examines the constitutional framework for economic governance, tracing the provisions of the 1972 Constitution that address property rights, the organization of the national economy, the rights of workers, and the state's obligations toward social and economic welfare. It analyzes the deep structural tension between the justiciable civil and political rights of Part III of the Constitution and the non-justiciable directive principles of Part II, a tension that Mahmudul Islam recognized as one of the most important theoretical and practical questions in Bangladesh's constitutional law. It traces the jurisprudential evolution by which Bangladesh's courts, following the lead of India's Supreme Court, have gradually bridged this structural divide by reading economic and social content into the justiciable rights of Part III. And it places all of these themes in the context of the global debate about economic constitutionalism and socioeconomic rights that has transformed the field of comparative constitutional law in the first decades of the twenty-first century, a debate that has reached new intensity in the most recent reform discussions in Bangladesh triggered by the July 2024 uprising and the constitutional reform agenda of 2025 and 2026.

The analysis that follows is not merely descriptive. It is animated by the central conviction that Mahmudul Islam himself brought to his constitutional scholarship: that the test of a constitutional order is not merely whether it establishes the formal machinery of democratic government but whether it actually improves the lives of the people in whose name it is written. A constitution that is silent about poverty, that protects property rights without attending to their social function, that guarantees formal equality while ignoring structural inequality, is not merely incomplete. It is, in important senses, a constitutional failure, a document that falls short of the transformative promise that constitutional government is capable of making. Understanding this dimension of Mahmudul Islam's thought requires engaging seriously with the economic dimensions of his constitutional analysis, which is the purpose of the four chapters that follow.

CHAPTER TWELVE: THE ARCHITECTURE OF ECONOMIC CONSTITUTIONALISM IN BANGLADESH

12.1 Constitutional Dualism and Its Origins: The Divide Between Parts II and III

The most fundamental structural feature of the economic dimension of Bangladesh's constitutional architecture is the division of the constitutional text into two distinct registers of constitutional normativity. Part II of the Constitution, titled "Fundamental Principles of State Policy," contains a set of provisions that the Constitution itself explicitly declares to be non-justiciable. Article 8(2) states that the principles set out in Part II "shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall be the basis of the work of the State and of its citizens." Article 8(2) further provides, however, that these principles "shall not be judicially enforceable." Part III, titled "Fundamental Rights," contains a set of rights that are explicitly justiciable, enforceable through the writ jurisdiction of the High Court Division under Article 102 and, on appeal, through the Appellate Division.

The economic significance of this structural division is profound. The vast majority of the provisions that address the material conditions of life of Bangladesh's population, including the right to food, clothing, shelter, education, and medical care set out in Article 15; the provision of free and compulsory education in Article 17; the obligation to ensure the right to work set out in Article 20; the provisions about workers' rights and just and humane conditions of work in Article 14 and Article 15; the commitment to reducing inequalities in income and status in Article 19(2); and the guarantee that the state will take effective measures to prevent the concentration of wealth and the means of production in Article 20(2): all of these provisions are located in Part II and are thus, on the face of the constitutional text, beyond judicial enforcement.

By contrast, Part III contains the set of rights that the courts have the jurisdiction and the obligation to enforce. These rights are predominantly civil and political in character: the right to equality before the law (Article 27), the right to freedom from discrimination (Article 28), the right to equal opportunity in public employment (Article 29), the right to protection of law (Article 31), the right to life and personal liberty (Article 32), the right against arbitrary arrest and detention (Article 33), the right against forced labor (Article 34), the right against double jeopardy and self-incrimination (Article 35), the freedom of movement (Article 36), the freedom of assembly (Article 37), the freedom of association (Article 38), the freedom of thought, conscience and speech (Article 39), the freedom of profession or occupation (Article 40), the freedom of religion (Article 41), the right to property (Article 42), and the right to protection of home and correspondence (Article 43).

Mahmudul Islam's treatment of this structural division is among the most illuminating passages in his constitutional law book. He observed, with characteristic analytical precision, that the constitutional drafters of 1972 had made a choice whose practical consequences far exceeded what the drafters may have consciously intended. By placing the substantive economic rights of ordinary citizens in the non-justiciable Part II and the primarily formal political and civil rights in the justiciable Part III, the Constitution had created a hierarchy of constitutional values in which the procedural conditions of political participation were more easily vindicated in court than the material conditions of human survival and dignity. This was not, Islam noted, a necessary feature of constitutional design. The drafters could have made a different choice. The

question was why they made the choice they did, and what the consequences of that choice had been for the constitutional culture of Bangladesh.

The answer to the first part of this question lies partly in the intellectual inheritance of the constitutional tradition and partly in the practical constraints of constitution-making in the aftermath of the Liberation War. The distinction between justiciable civil and political rights and non-justiciable directive principles of state policy was directly borrowed from the constitutional design of India's 1950 Constitution. The Indian Constitution had placed its Fundamental Rights in Part III and its Directive Principles of State Policy in Part IV, using virtually the same language and the same structural arrangement that Bangladesh would later adopt. The Indian constitutional drafters, including the great constitutionalist B.R. Ambedkar, had in turn been influenced by the constitutional design of Ireland's 1937 Constitution, which had included a set of "Directive Principles of Social Policy" that were expressly declared to be non-cognizable in any court of law.

The choice to make directive principles non-justiciable reflected several considerations that had both intellectual weight and practical urgency. First, there was the concern about the institutional competence of courts: judges trained in the adversarial common law tradition were seen as poorly equipped to adjudicate claims about the allocation of scarce public resources, which inherently required the kind of policy expertise, democratic accountability, and systemic perspective that courts were thought to lack. Second, there was the concern about the separation of powers: requiring courts to enforce positive obligations of the state to provide economic goods and services was seen as crossing the constitutional boundary between the judicial function of interpreting and applying the law and the legislative and executive functions of making policy and allocating resources. Third, there was the concern about the limitations of constitutional drafting: the content of specific economic entitlements is difficult to determine in advance, varies with economic circumstances, and requires the flexibility that legislation allows but that constitutional provisions, by their nature, make difficult to adjust.

Mahmudul Islam acknowledged all of these considerations with intellectual honesty. But he also pressed the analysis further, asking whether the consequences of the directive principles framework had matched the intentions of its designers. The answer, as he surveyed the history of Bangladesh's constitutional experience, was decidedly mixed. The directive principles had served as a source of interpretive guidance in some important constitutional decisions, but the formal non-justiciability of the economic rights they contained had created a systematic gap between the constitutional aspiration of a state committed to ensuring the material welfare of its citizens and the constitutional reality of a legal system in which those citizens could not go to court to enforce the state's economic obligations.

12.2 The Historical Genesis of the Directive Principles: Gandhi, Ambedkar, and the Social Question

To appreciate the depth of Mahmudul Islam's engagement with the directive principles framework, it is necessary to understand the intellectual and political history that gave rise to it, a history that is rooted in the constitutional debates of the Indian subcontinent but that also

connects to broader global conversations about the relationship between liberalism and social democracy that have continued to the present day.

The concept of directive principles as a device for incorporating social and economic aspirations into a constitutional text without making them judicially enforceable originated in the Irish constitutional tradition and was elaborated most systematically by the Indian constitutional draftsmen. The Indian Constituent Assembly debates of 1946-1949, as preserved and analyzed by scholars including Austin Granville and Soli Sorabjee, reveal a rich and complex conversation about the relationship between fundamental rights and directive principles, between the liberal and the socialist traditions of constitutional thought, and between the interests of the propertied classes who feared that enforceable economic rights would undermine the institution of private property and the interests of the mass of the Indian (and, by extension, the East Pakistani and eventually the Bangladeshi) population who had been promised that independence would bring not merely political freedom but social and economic emancipation.

The figure of B.R. Ambedkar is particularly significant here. Ambedkar, who chaired the Indian Constitutional Drafting Committee, was himself a man of the margins, a Dalit (formerly known as an "untouchable") who had risen through extraordinary personal achievement to become one of India's most distinguished legal and political thinkers. His experience of the Indian caste system had convinced him that political democracy was worthless without social and economic democracy, that a constitution that guaranteed formal equality before the law while leaving intact the structures of economic exploitation and social discrimination was a document that served the interests of the privileged at the expense of the dispossessed. Ambedkar wanted the directive principles to be justiciable. He was overruled by a majority of the Drafting Committee who feared, among other things, that making economic rights judicially enforceable would lead to constitutional challenges against land reform legislation and other measures needed to redistribute the wealth concentrated in the hands of the zamindari (large landlord) class.

The result was a compromise that has been described, with varying degrees of approval, as a "unique synthesis" of liberal and socialist constitutional traditions. The fundamental rights of Part III protected individual liberty against the state; the directive principles of Part IV directed the state toward the active promotion of social and economic equality. The courts would enforce the former but not the latter. The legislature and executive would be guided by the latter in making law and policy, with their compliance with the directive principles subject to political rather than judicial accountability.

Mahmudul Islam, writing with the benefit of more than four decades of constitutional experience since Bangladesh adopted this framework, was able to assess this synthesis with a historical perspective unavailable to those who designed it. His assessment was nuanced but ultimately critical. The directive principles framework had provided the constitutional foundation for some important legislative measures, including land reform, nationalization of industries, labor protection legislation, and social welfare programs. But it had also, in practice, proved insufficient to hold successive governments accountable for the social and economic commitments they had made in the constitutional text. The non-justiciability of the directive principles meant that governments could ignore them, water them down, or implement them

selectively and in ways that served the interests of powerful constituencies rather than the constitutional aspiration of general welfare, without fear of judicial accountability.

This was not merely a theoretical concern. The history of Bangladesh from independence to the publication of Islam's book in 1995, and from 1995 to the third edition in 2012, was a history of systematic underperformance by the state in meeting its constitutional economic obligations. Poverty, malnutrition, inadequate access to education and health care, poor labor conditions in the garment industry, displacement of communities from their land, and the concentration of economic wealth in the hands of a small and politically connected elite: all of these were realities of Bangladeshi economic life that stood in sharp and uncomfortable contrast to the economic aspirations articulated in Part II of the Constitution. The directive principles framework had not, on its own, been sufficient to bridge this gap.

12.3 The Right to Property: Article 42 and Its Complicated History

If the directive principles framework represents the economic constitutional law of aspiration, the right to property in Part III represents the economic constitutional law of constraint. Article 42 of the 1972 Constitution provides that every citizen shall have the right to acquire, hold, transfer, or otherwise dispose of property. It also provides that no property shall be compulsorily acquired, nationalized, or requisitioned save by authority of law and upon payment of compensation. This provision, located firmly in the justiciable Part III, has been one of the most contested and most litigated provisions in Bangladesh's constitutional history.

Mahmudul Islam's treatment of Article 42 in his constitutional law book is among the most technically precise and analytically sophisticated sections of the entire work. He traced the evolution of the right to property through the constitutional text, through the successive amendments that modified it, and through the judicial decisions that gave it content. He was attentive both to the legitimate concerns of property owners who had had property compulsorily acquired without adequate compensation and to the competing concerns of those who argued that a constitutionally protected right to property, enforced through the courts, could become an obstacle to socially necessary redistribution of land and wealth.

The original Article 42 of the 1972 Constitution guaranteed the right to property but also gave Parliament extensive power to impose restrictions on property rights "in the public interest." It required compensation for compulsory acquisition, but it permitted the law providing for compulsory acquisition to specify the principles on which, and the manner in which, compensation was to be assessed, thus leaving significant legislative discretion in the determination of the compensation amount. This was a deliberate design choice, reflecting the drafters' desire to preserve the constitutional foundation for land reform legislation that would redistribute the large landholdings that had been concentrated in the hands of zamindars (big landlords) and other propertied classes under the colonial system.

The constitutional treatment of property rights was significantly altered by the second amendment of 1973, which inserted Article 47(3) into the Constitution. This provision stated that nothing in the Chapter on Fundamental Rights (Part III) should apply to any law providing for preventive detention, or for compulsory acquisition, nationalization, or requisition of any

property for a public purpose, if the law expressly provided that it would have effect notwithstanding anything in the Chapter on Fundamental Rights. This provision had the effect of creating a constitutional mechanism by which the right to property, and indeed all of the fundamental rights, could be effectively suspended by a parliamentary statute that explicitly claimed supremacy over Part III.

The practical consequences of Article 47(3) were dramatic. It meant that the constitutional protection of property rights, and the right to judicial enforcement of those rights through Article 102, could be entirely displaced by legislation that simply declared itself to be in force notwithstanding the fundamental rights provisions. This was a radical departure from the constitutional logic of a justiciable bill of rights, which is that certain rights are placed beyond the reach of ordinary legislation precisely because they are too important to be left to the mercy of parliamentary majorities. Article 47(3) effectively reversed this logic for the specific domains it covered, turning constitutional rights into parliamentary privileges that existed only at the legislative majority's discretion.

Mahmudul Islam was deeply critical of Article 47(3) and of the related provisions that had been inserted into the constitutional text through successive amendments. He argued that the effect of these provisions was to create a two-tier system of constitutional rights: a tier of rights that were genuinely protected against legislative override, and a tier of rights, including property rights in the context of nationalization and acquisition, that were effectively at the mercy of the legislature. This two-tier structure, he argued, was incompatible with the fundamental logic of constitutional supremacy: if the legislature can always override constitutional rights by simply declaring that a law will have effect notwithstanding those rights, then the constitution has not genuinely established rights at all, but merely created presumptions that can be rebutted by an ordinary (if sometimes specially majority) legislative act.

The judicial response to this structural tension has been complex and sometimes contradictory. Bangladesh's courts have, on some occasions, pushed back against attempts by the legislature to use Article 47(3) mechanisms to avoid constitutional scrutiny of property acquisition. They have insisted, in several significant decisions, that even legislation claiming exemption from fundamental rights review must comply with certain minimum standards of due process and reasonableness. They have developed a doctrine of constitutional proportionality, requiring that restrictions on property rights bear a reasonable relationship to the public purpose they claim to serve. And they have, in some cases, read the requirement of "compensation" in Article 42 as imposing a constitutional obligation to pay just compensation rather than merely nominal or token compensation.

But the courts' ability to provide effective constitutional protection of property rights has been significantly constrained by the political and legal environment in which they have operated. During periods of military rule, when the constitution was suspended or subjected to martial law proclamations, the courts' writ jurisdiction was restricted or eliminated. During periods of nominally democratic governance, the political culture of executive dominance created strong pressures on the judiciary to defer to legislative and executive determinations about property rights. And the relative poverty of Bangladesh's constitutional legal culture, the limited resources available to individual litigants to bring constitutional challenges, and the practical difficulties of

enforcing judicial orders against the state in property matters have all limited the transformative potential of Article 42 as a constitutional protection for property owners, particularly small landholders and the rural poor whose property rights are most frequently threatened by government action.

12.4 The Socialism Clause: Mahmudul Islam on the Most Contested Constitutional Principle

Of all the fundamental principles of state policy established in the original 1972 Constitution, none has been more contested, more misunderstood, or more fiercely debated than the principle of socialism. Article 8(1) of the original Constitution declared that "the principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy." The word "socialism" in this provision was not merely rhetorical. It was given substantive content through a series of provisions in Part II and Part III that established the constitutional framework for state ownership of key industries, for the regulation of private economic activity, and for measures to reduce economic inequality.

Mahmudul Islam's treatment of the socialism clause is among the most philosophically sophisticated sections of his book, and it is worth examining in some detail because it reveals both the depth of his constitutional thinking and the complexity of the interpretive challenges that Bangladesh's constitutional socialism presented. He began by noting that the word "socialism" in the 1972 Constitution did not and could not mean what it meant in the Marxist-Leninist tradition, which required the abolition of private property and the complete socialization of the means of production. The 1972 Constitution explicitly protected the right to property in Article 42 and implicitly accepted the continued existence of a private sector of the economy. Its socialism was not the socialism of total state ownership but what Islam described, following the interpretation offered by Sheikh Mujibur Rahman himself, as the socialism of a mixed economy in which the state owned and operated key industries and utilities, while private enterprise continued to function in other sectors under state regulation and subject to constitutional requirements of fairness and equity.

This concept of constitutional socialism as a mixed economy model was, as Mahmudul Islam recognized, not unique to Bangladesh. It was closely related to the Fabian socialist tradition in Britain, which had influenced the Indian National Congress and through it the Awami League, and which had shaped constitutional designs across much of the post-colonial world in the 1950s and 1960s. The Directive Principles of State Policy in the Indian Constitution, particularly Article 39 of the Indian Constitution, which required the state to ensure that the ownership and control of the material resources of the community were distributed to "subserve the common good" and that the economic system did not result in the concentration of wealth "to the common detriment," were direct expressions of this Fabian constitutional socialism, and they were closely mirrored in Bangladesh's own Part II.

The constitutional status of the socialism principle was dramatically transformed by the sequence of amendments that followed the assassination of Sheikh Mujibur Rahman in 1975. The fifth amendment of 1979, which retrospectively ratified the martial law proclamations of General

Ziaur Rahman's regime, effectively modified the constitutional framework by substituting "economic and social justice" for "socialism" in several constitutional provisions. This substitution was later formally confirmed through further textual amendments. The socialism that had been at the core of the 1972 Constitution's economic philosophy was replaced, at least in formal constitutional terms, by the softer and more market-compatible concept of "social justice."

Mahmudul Islam's analysis of this substitution was carefully balanced. He noted that the replacement of "socialism" with "economic and social justice" was, in one sense, constitutionally significant: it removed the doctrinal foundation for a constitutionally mandated command economy and opened the constitutional framework to the market-oriented economic reforms that Bangladesh would undertake in the 1980s and 1990s. But he also noted that the practical effect of the substitution was less dramatic than it might appear, precisely because the original constitutional socialism had always been understood as compatible with a mixed economy rather than as a mandate for complete state ownership. The real shift, Islam argued, was not in the specific content of the economic constitutional framework but in the political and ideological climate in which that framework operated: the replacement of a constitutional culture that, whatever its failings, had been genuinely committed to reducing economic inequality, with a constitutional culture that was more comfortable with market outcomes and less concerned about their distributional consequences.

The fifth amendment and its socialism-to-social-justice substitution was one of the provisions challenged and ultimately struck down in the landmark Fifth Amendment case decided by the Appellate Division in 2010. The court held that the fifth amendment, having been enacted by a parliament whose authority derived from an unconstitutional martial law regime, was itself constitutionally invalid. The doctrinal consequences of this holding for the economic provisions of the Constitution were significant: if the fifth amendment was invalid, did that mean that the original socialism clause was restored? The court's handling of this question was somewhat elliptical, but its general approach was to recognize that the constitutional order could not be simply restored to its pre-1975 state after more than three decades of constitutional development, and that the concept of "economic and social justice" that had replaced "socialism" in functional terms had itself become part of the constitutional fabric in a way that the simple invalidation of the fifth amendment did not undo.

Mahmudul Islam wrote about the Fifth Amendment case in the context of the third edition of his book, published in 2012, and his analysis of the socialism question in that edition reflects the complexity of a constitutional landscape in which the original commitment to economic equality had been formally modified, partially restored, and then practically diluted through the political and economic changes of four decades. His conclusion, characteristically, was not a simple endorsement of either the original socialism or its replacement, but an insistence that the constitutional text, whatever its specific language, imposed on the state a genuine and enforceable obligation to address the conditions of poverty, inequality, and economic vulnerability that afflicted the mass of Bangladesh's population, and that a constitutional order that failed to take that obligation seriously had fallen short of what a truly transformative constitution demanded.

12.5 The Eighth Amendment and the State Religion Controversy: Economic Implications of a Cultural Constitutional Change

No discussion of the economic dimension of Bangladesh's constitutional history can entirely avoid the question of the eighth amendment of 1988, which declared Islam to be the state religion of Bangladesh. The economic implications of this constitutional change are not immediately obvious, but they are real and significant, and Mahmudul Islam's treatment of the eighth amendment reveals a dimension of his constitutional thought that connects the economic and the cultural in ways that purely technical constitutional analysis might miss.

The declaration of Islam as the state religion had direct implications for the constitutional status of the principle of secularism, which had been one of the four fundamental principles of the 1972 Constitution. The secularism clause had been intended to ensure that the state would treat all citizens equally regardless of religious belief and that the institutions of the state would be organized on principles of religious neutrality. In the economic domain, this meant that state benefits, public employment, educational opportunities, and other economic goods distributed by the state were supposed to be accessible to all citizens without discrimination on the basis of religion.

The replacement of secularism by a state religion declaration created constitutional uncertainty about whether the principle of equal treatment regardless of religion, now no longer supported by an explicit constitutional commitment to secularism, remained constitutionally mandated. Mahmudul Islam was scrupulous in his analysis of this question, noting that the formal declaration of Islam as the state religion did not, on its face, abolish the right to freedom of religion guaranteed in Article 41 or the right against discrimination on grounds of religion guaranteed in Article 28. But he also observed that the shift in constitutional culture created by the eighth amendment had practical consequences for the treatment of religious minorities in the allocation of economic goods and opportunities, and that these practical consequences were constitutionally problematic even if they did not amount to formal constitutional violations.

This dimension of Islam's constitutional analysis connects to a broader jurisprudential theme that runs through his work: the recognition that constitutional text and constitutional culture are not the same thing, and that a formally correct constitutional text can be rendered practically ineffective by a constitutional culture that fails to take its commitments seriously. The economics of religious discrimination in Bangladesh, the systematic disadvantage experienced by Hindu, Buddhist, and Christian minorities in access to land, credit, public employment, and educational opportunities, was not simply a product of illegal conduct that could be addressed by constitutional litigation. It was also a product of a constitutional culture that had moved away from the secular pluralism of the 1972 founding vision toward a more explicitly Islamic framing of national identity and state purpose. The eighth amendment was both a symptom and a cause of this cultural shift, and understanding its economic implications required attending to the relationship between constitutional culture and economic outcomes in ways that formal doctrinal analysis alone could not capture.

CHAPTER THIRTEEN: LABOUR RIGHTS AND THE CONSTITUTIONAL FRAMEWORK FOR WORKERS

13.1 The Constitutional Status of Labour in Bangladesh

The constitutional framework for labour in Bangladesh represents one of the most complex and most practically significant intersections between the formal constitutional text and the social and economic realities of Bangladeshi life. Bangladesh is a country whose economy has been built, in large measure, on the labor of its population, and particularly on the labor of its garment workers, who constitute the backbone of the ready-made garment (RMG) industry that accounts for the overwhelming majority of Bangladesh's export earnings. The constitutional provisions relating to labor must therefore be understood not merely as abstract doctrinal questions but as provisions that directly affect the conditions of life of the millions of workers who are the economic foundation of the Bangladeshi state.

The 1972 Constitution addressed the rights of workers primarily through the directive principles of Part II. Article 14 declared that it was "a fundamental responsibility of the State to emancipate the toiling masses, the peasants and workers, and backward sections of the people from all forms of exploitation." Article 15 established that it was "a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people." More specifically, Article 15(b) established the right to work, "meaning the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work," as a fundamental principle of state policy, and Article 15(c) established the right to "reasonable rest, recreation and leisure" as another fundamental principle.

Article 20 is particularly significant in the context of labor rights. It provides that "work is a right, a duty and a matter of honour for every citizen who is capable of working, and everyone shall be paid for his work on the basis of the principle 'from each according to his abilities to each according to his work.'" This formulation, which echoes Marx's famous dictum from his Critique of the Gotha Programme, represented one of the most explicitly socialist provisions in the entire constitutional text. It established a constitutional principle of payment according to work, as opposed to payment according to the market value of labor, and it suggested a constitutional commitment to eliminating the exploitation of labor by capital that went significantly beyond the conventions of liberal constitutionalism.

Article 20 also provided that the State shall "endeavour to create conditions in which, as a general principle, persons shall not be able to enjoy unearned incomes," another provision with clear socialist constitutional implications. The concept of "unearned income," in the Marxist-influenced economic theory that shaped this provision, referred primarily to income derived from ownership of capital or land rather than from labor, suggesting that the constitutional framework aspired to a transformation of the property structure of Bangladeshi society in which the accumulation of wealth through passive ownership would be discouraged or eliminated.

Mahmudul Islam's analysis of these labor provisions in Part II reveals his characteristic analytical combination of doctrinal precision and philosophical depth. He noted that the provisions' placement in the non-justiciable Part II meant that workers could not go to court to enforce the right to work, the right to reasonable wages, or the right to protection from exploitation directly on the basis of these constitutional provisions. The practical framework for

labor rights had to be constructed through ordinary legislation, primarily the Labour Act of 2006 and its predecessors, rather than through constitutional litigation.

But Islam also noted, with characteristic care for the practical implications of constitutional design, that the non-justiciability of the Part II labor rights did not mean that they were constitutionally irrelevant. Courts could use them as interpretive guides in construing legislative provisions relating to labor rights; Parliament was constitutionally required to take them into account in making labor legislation; and the failure of the state to take reasonable measures toward achieving the labor rights goals of Part II could be constitutionally relevant in at least some indirect ways, particularly where the failure could be characterized as a violation of the right to equality or the right to protection of law guaranteed in the justiciable Part III.

13.2 From Directive Principles to Fundamental Rights: The Judicial Expansion of Labour Protections

One of the most significant jurisprudential developments in Bangladesh's constitutional history has been the gradual erosion of the sharp division between the justiciable fundamental rights of Part III and the non-justiciable directive principles of Part II in the context of labor rights. This development, which closely parallels a similar evolution in Indian constitutional jurisprudence, has been achieved primarily through an expansive interpretation of the right to life in Article 32, a right that has been read by Bangladesh's courts, following the lead of the Indian Supreme Court, as encompassing not merely the right to physical existence but the right to a life of minimum quality, dignity, and material sufficiency.

The foundational case in the Indian jurisprudential tradition for this expansive reading of the right to life was the Supreme Court's 1981 decision in *Francis Coralie Mullin v. Union Territory of Delhi*, in which Justice Bhagwati declared that the right to life under Article 21 of the Indian Constitution included "the right to live with basic human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings." This expansive reading of the right to life effectively incorporated many of the directive principles of the Indian Constitution's Part IV into the justiciable Part III, creating judicial enforceability for rights that the constitutional text had placed beyond judicial reach.

Bangladesh's courts have adopted a similar approach. In a series of decisions from the 1990s onward, the High Court Division and the Appellate Division have read the right to life in Article 32 of Bangladesh's Constitution as incorporating rights to a minimum standard of living, to adequate nutrition, to a safe and healthy working environment, and to protection from exploitation in the workplace. These decisions have been particularly significant in the context of the garment industry, where the Bangladesh Supreme Court has on several occasions used the writ jurisdiction under Article 102 to compel the government to enforce labor safety standards, to ensure the payment of minimum wages, and to protect workers from illegal dismissal.

The most dramatic and internationally significant of these judicial interventions in the labor rights domain came in the aftermath of the Rana Plaza building collapse of April 24, 2013, in

which a garment factory building collapsed, killing 1,134 workers and injuring thousands more. The Rana Plaza disaster was the worst industrial accident in the history of Bangladesh and one of the deadliest industrial accidents in the world. It exposed, in the most brutal possible way, the systematic failure of the Bangladeshi state to enforce the constitutional and statutory obligations to protect workers from preventable risks to their lives and health.

The judicial response to Rana Plaza was significant. The High Court Division took suo motu cognizance of the disaster and issued directions to the government to establish a building inspection regime for garment factories, to ensure the payment of compensation to victims and their families, and to reform the regulatory framework for factory safety. These directions were grounded primarily in the right to life under Article 32, which the court read as imposing on the state a positive obligation to protect workers from preventable industrial hazards. The court's intervention drew on both the domestic constitutional jurisprudence developing around Article 32 and on international human rights standards regarding the right to safe working conditions.

Mahmudul Islam, writing in the third edition of his constitutional law book published just one year before the Rana Plaza disaster, had already anticipated the constitutional framework that would be invoked in the judicial response to the disaster. His analysis of Article 32 explicitly addressed the question of whether the right to life could be interpreted as imposing positive obligations on the state to protect workers from preventable hazards, and he answered the question affirmatively, citing both the Indian precedents and the logic of constitutional purpose: a constitutional right to life that protected citizens from being killed by the state but permitted the state to allow citizens to be killed through preventable industrial neglect was a right that failed its most fundamental purpose.

13.3 The International Dimension: Labour Rights in the Constitutional Framework and Bangladesh's Treaty Obligations

The constitutional framework for labor rights in Bangladesh cannot be understood without reference to the international dimension of labor rights law, which has become increasingly important in the period since Mahmudul Islam published the third edition of his book. Bangladesh is a party to numerous International Labour Organization (ILO) conventions, including those addressing freedom of association, the right to organize and collective bargaining, forced labor, child labor, discrimination in employment, and minimum wages. These treaty obligations interact with the domestic constitutional framework in complex ways that have been the subject of significant legal and academic analysis.

The constitutional basis for international treaty obligations in Bangladesh's legal system is found in Article 25 of the Constitution, which requires the state to "base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter." Article 25 does not directly incorporate international treaty obligations into domestic constitutional law, but the courts have read it, together with the right to life in Article 32 and the equality provisions in Articles 27-29, as providing a constitutional foundation for the domestic application of international human rights standards including those relating to labor rights.

The relationship between Bangladesh's constitutional labor rights framework and its international treaty obligations has become a matter of particular urgency in the context of Bangladesh's aspiration to maintain preferential access to the European Union market under the EU's Generalised Scheme of Preferences (GSP). The EU's GSP program provides duty-free access to the EU market for developing countries, but it conditions this access on compliance with core labor rights standards as defined by ILO conventions. Bangladesh's garment industry, which is the primary beneficiary of GSP access, has faced repeated criticism from the EU and from international labor rights organizations for failures to ensure freedom of association, the right to collective bargaining, and safe working conditions.

The legal and constitutional significance of this international economic pressure is considerable. Bangladesh's constitutional framework already includes, at least in principle, the labor rights standards demanded by the EU's GSP conditionality: freedom of association is guaranteed in Article 38, the right to form trade unions is guaranteed in Article 38(1)(c), and the right to protection from exploitation in the workplace is implicit in the directive principles of Part II and in the expanded reading of Article 32. The gap is not between Bangladesh's constitutional commitments and the international standards but between those commitments and the practical reality of their implementation.

Mahmudul Islam, writing in a period before the full development of the EU GSP framework and the international labor rights accountability mechanisms that now constrain Bangladesh's economic policy, nevertheless identified the essential tension with characteristic clarity. A constitutional order that includes rights to freedom of association and to protection from exploitation but fails to enforce those rights in the sector of the economy that employs the largest number of workers and generates the majority of the country's export income is a constitutional order that has permitted a systematic gap to develop between constitutional text and constitutional reality. The closing of that gap requires not merely better judicial enforcement of existing rights but a transformation of the political economy of the constitutional order: a shift in the balance of power between capital and labour that allows the constitutional rights of workers to be actually exercised rather than merely formally guaranteed.

13.4 The 2025 Labour Ordinance: Constitutional Implications of the Post-July Reform

The constitutional reform process initiated by the July 2024 uprising produced, among its most immediately significant institutional outputs, a major reform of the Labour Act through the 2025 Labour Amendment Ordinance. This ordinance, as noted in earlier parts of this textbook, made important changes to the framework for union formation, to the penalties for unfair labour practices, and to the minimum wage determination process. Its constitutional implications are significant and deserve careful analysis in the context of the framework developed by Mahmudul Islam.

The most constitutionally significant change introduced by the 2025 Labour Amendment Ordinance was the replacement of the percentage-based threshold for union formation with a fixed-number threshold. Under the previous Labour Act, forming a trade union required that at least twenty percent of the workers in an enterprise support the union's registration. In large garment factories with hundreds or thousands of workers, meeting this twenty percent threshold

was extremely difficult, particularly given the documented practice of garment factory owners of dismissing or intimidating workers who supported union organization. The practical effect of the percentage threshold was to make union organization in large factories almost impossible, a result that was directly at odds with the constitutional right to freedom of association guaranteed in Article 38.

The replacement of the percentage threshold with a fixed-number requirement directly addressed this constitutional deficiency. By making the threshold for union formation a fixed number rather than a percentage of the total workforce, the ordinance made union organization practically feasible in large factories for the first time. This reform has direct constitutional implications: it represents a legislative step toward implementing the constitutional right to freedom of association in a way that makes that right practically meaningful for workers in the garment industry, rather than merely formally guaranteed.

The constitutional analysis of this reform, through the lens provided by Mahmudul Islam's framework, yields the following observation. The original percentage-based threshold was not merely a policy choice but a constitutional issue, because it effectively nullified the constitutional right to freedom of association for the majority of Bangladesh's organized industrial workers. A constitutional right that is formally guaranteed but practically unavailable is not a right that exists in any meaningful sense. The legislature's correction of this practical nullification through the 2025 Labour Amendment Ordinance represents a move toward constitutional compliance, a legislative implementation of a constitutional obligation that had been neglected or ignored for decades. It illustrates, as Mahmudul Islam consistently argued, that the implementation of constitutional rights requires not merely the formal enactment of constitutional provisions but sustained legislative and executive action to ensure that those provisions are practically effective.

CHAPTER FOURTEEN: PROPERTY RIGHTS, LAND LAW, AND THE CONSTITUTIONAL ECONOMY OF INEQUALITY

14.1 Land and the Constitutional Imagination

In a country like Bangladesh, where the majority of the population was, until relatively recently, primarily agricultural, and where the distribution of land has been the single most important determinant of economic status and political power for centuries, the constitutional treatment of land rights is not merely a technical legal question. It is a question about the fundamental structure of Bangladeshi society, about who owns what, about who has the power to exclude others from the material resources necessary for survival, and about what the state is obliged to do to ensure that the distribution of those resources does not violate the constitutional commitments to equality and human dignity.

Mahmudul Islam was acutely aware of the social significance of land in Bangladesh's constitutional economy. He wrote about land rights not merely as a technical sub-category of property law but as a constitutional domain in which the tension between the protection of existing property rights and the aspiration toward greater economic equality was most acute and most practically consequential. His analysis of the constitutional law of land tenure, land

acquisition, and land reform drew on a deep familiarity with the history of land law in Bengal, from the Permanent Settlement of 1793, through the zamindari abolition legislation of East Pakistan in the 1950s, to the land reform measures of independent Bangladesh, and to the contemporary challenges of illegal land grabbing, fraudulent land transfers, and the displacement of riverine communities through environmental change.

The Permanent Settlement of 1793 is the historical starting point for any serious analysis of land rights in Bangladesh. Lord Cornwallis's settlement, which fixed the land revenue assessments of Bengal permanently and created a class of hereditary zamindars (landlords) with virtually absolute property rights in the land, created the fundamental structure of agrarian inequality in Bengal that would persist, with modifications, for a century and a half. The zamindari system created a class of large landowners who extracted rent from the cultivating classes without any constitutional obligation to invest in agricultural improvement or to ensure the welfare of the tenant farmers and agricultural laborers on whose labor their income depended. It was, in constitutional terms, a system that the colonial state had deliberately designed to serve its revenue needs at the expense of the constitutional rights (to the extent that colonial subjects had any) of the agricultural population.

The legal abolition of the zamindari system in East Pakistan, through the State Acquisition and Tenancy Act of 1950, was one of the most significant legal changes in the history of the region. It abolished the zamindars' proprietary rights in land, transferred land to the actual cultivators, fixed ceilings on landholdings, and created a new legal framework for agricultural tenancy. The abolition was hailed at the time as a revolutionary change in the social structure of East Pakistan, one that would transform the conditions of the peasant majority and create a more egalitarian agrarian society.

The reality was considerably more complicated, and considerably less transformative, than the hopes attached to the zamindari abolition would suggest. The ceilings on landholdings proved easy to evade through fraudulent transfers within families and among connected parties. The beneficiaries of the abolition were frequently not the poorest cultivators but middle peasants with sufficient literacy, resources, and connections to navigate the administrative processes for claiming titles to newly released land. Landless laborers, the most economically vulnerable class of agricultural workers, were largely excluded from the benefits of the reform. And the political power of the surviving landlord class, while diminished from its zamindari peak, remained sufficient to protect its economic interests against more radical redistribution measures.

The 1972 Constitution inherited this land reform history and sought to complete it. Article 13 of the original Constitution established three forms of ownership: state ownership, cooperative ownership, and private ownership, with the last of these subject to such limitations as the law might prescribe. Article 47(1) specifically provided that nothing in the Chapter on Fundamental Rights should affect the operation of any law "providing for compulsory acquisition, nationalization, or requisition of property." The Land Reform Ordinance of 1984, the Land Reform Act of 1987, and various other legislative measures sought to reduce landlessness by setting ceilings on agricultural landholdings and distributing excess land to the landless.

Mahmudul Islam's assessment of this land reform legislative history was balanced and realistic. He acknowledged that the legislative measures represented genuine attempts to address the constitutional commitment to reducing inequality and to ensuring that the material resources of agricultural land were distributed in a way that "subserved the common good," as the constitutional text required. But he also noted, with the realism of a practicing lawyer who had encountered the gap between legislative aspiration and administrative reality throughout his career, that the land reform measures had been significantly undermined in implementation: by the corruption of the bureaucratic apparatus that was supposed to administer them, by the political influence of landed interests in shaping both the legislation and its enforcement, and by the continuing failure of the state to invest in the land administration infrastructure that effective land reform required.

14.2 The Constitutional Right Against Forced Displacement: Khas Land, River Erosion, and the Rights of the Dispossessed

One of the most practically significant applications of the constitutional framework for property and equality rights in Bangladesh has been in the domain of land access by the poor, particularly in relation to khas land (government-owned land that is legally required to be distributed to the landless) and the rights of communities displaced by river erosion and flooding.

Bangladesh is among the most densely populated and most riverine countries on earth. Its geography, dominated by the vast delta formed by the confluence of the Padma, Meghna, and Jamuna rivers, creates a unique pattern of land tenure in which substantial areas of land are constantly being created by river accretion (char land), destroyed by river erosion, and transformed between land and water. This geographical reality creates acute constitutional challenges: How should property rights be allocated when land that was legally owned by one party is submerged by river flooding and then re-emerges years later, potentially transformed in shape and location? What are the constitutional obligations of the state when communities are displaced from their land by erosion that is partly attributable to upstream water management decisions? And what are the constitutional rights of communities who have been settled for generations on char land that formally belongs to the government, whose khas land allocation processes have systematically excluded the poorest and most vulnerable in favor of more politically connected claimants?

These questions are not merely technical land law issues. They are constitutional questions about the meaning of the right to property, the right to equality, the right to protection of law, and the right to life in the specific context of Bangladesh's geographical and economic conditions. Mahmudul Islam's constitutional framework, with its insistence on reading the economic and social content of the directive principles into the justiciable fundamental rights through purposive constitutional interpretation, provides the analytical tools for addressing these questions, even if his own treatment of them in his constitutional law book was necessarily limited by the space constraints of a comprehensive treatise.

The jurisprudence that has developed around these issues in Bangladesh's courts has been patchy and inconsistent. There are significant decisions in which the High Court Division has used its writ jurisdiction to protect communities on khas and char land from illegal eviction, reading the

right to life and the right to equality as imposing obligations on the state to ensure that the formal legal processes for allocating government land are actually followed rather than being subverted by the powerful local interests that have historically dominated these processes. There are also decisions in which the courts have been less willing to intervene, deferring to executive discretion in land allocation matters in ways that have allowed the systematic exclusion of the poorest communities to continue.

What has been largely missing from Bangladesh's constitutional jurisprudence on these questions, as Mahmudul Islam's framework would predict, is a coherent and principled constitutional doctrine that connects the specific issues of khas land distribution, char land rights, and river erosion displacement to the broader constitutional framework of economic rights and state obligations. The development of such a doctrine would require the courts to be willing to read the directive principles of Part II as imposing enforceable obligations in the specific contexts where their violation can be shown to amount to a violation of the justiciable rights of Part III. This is an interpretive project that is entirely consistent with the constitutional philosophy that Mahmudul Islam spent his career developing, and it represents one of the most important tasks facing Bangladesh's constitutional courts in the coming decade.

14.3 Indigenous and Minority Land Rights: The Chittagong Hill Tracts and the Limits of Constitutional Protection

The most acute and the most politically contentious land rights question in Bangladesh's constitutional history has been the rights of the indigenous peoples of the Chittagong Hill Tracts (CHT), the hilly region in the southeastern corner of Bangladesh that is home to thirteen indigenous peoples including the Chakma, Marma, Tripura, and several other communities. The CHT land rights question connects the constitutional framework of economic rights to questions of cultural rights, minority rights, and the right to self-determination that challenge the limits of Bangladesh's constitutional framework in fundamental ways.

The indigenous peoples of the CHT had traditional systems of land tenure that were recognized, in modified form, by both the colonial administration and the Pakistan government through a series of regulations, most notably the Chittagong Hill Tracts Regulation of 1900, which created a special administrative system for the CHT and protected indigenous communities from the land grabbing that had been facilitated by the general land law applicable in the rest of Bengal. The CHT Regulation created a system of tribal lands, restricted the settlement of non-indigenous peoples in the CHT, and established a system of indigenous headmen and circle chiefs who had traditional authority over land allocation within their communities.

The 1972 Constitution was drafted without any specific provisions addressing the rights of indigenous communities in the CHT. This was partly a reflection of the constitutional drafters' preoccupation with the immediate tasks of post-war reconstruction and partly a reflection of the dominant Bengali nationalist ideology that shaped the 1972 Constitution, which tended to conceptualize Bangladesh as a nation of Bengali people and had difficulty accommodating the claims of non-Bengali indigenous communities to constitutional recognition of their distinct identity and rights. Article 6(2) of the original Constitution defined Bangladeshis as "Bangalees,"

a definition that excluded the non-Bengali indigenous peoples of the CHT from the primary national identity as the Constitution conceptualized it.

The consequences of this constitutional failure were severe. From independence until the signing of the CHT Peace Accord in 1997, the CHT was the scene of a protracted armed conflict between the Bangladesh military and the Parbatya Chattagram Jana Samhati Samiti (PCJSS), the political organization representing the aspirations of the CHT indigenous peoples for autonomy and the protection of their traditional land rights. The conflict was accompanied by large-scale displacement of indigenous communities from their traditional lands, the settlement of hundreds of thousands of Bengali settlers in the CHT with government encouragement, the destruction of indigenous cultural sites, and documented human rights violations including the Kalarpana massacre of 1980 and numerous other incidents.

Mahmudul Islam's treatment of the CHT constitutional issues in his book was cautious and measured, reflecting both his personal intellectual caution on politically sensitive matters and the genuine constitutional complexity of a situation in which competing constitutional values, including the rights of the indigenous communities to their traditional lands and the government's claimed right to settle landless Bengalis in CHT areas, were in direct conflict. He noted the constitutional protection of the right to equality in Article 27, the prohibition on discrimination in Article 28, and the freedom of movement provisions in Article 36, observing that the application of these provisions to the CHT situation was complex precisely because the special administrative status of the CHT, created by regulations that predated the Constitution, created a framework of differential treatment that might or might not be constitutionally justified depending on how one analyzed the constitutional relationship between the general provisions of Part III and the special CHT regulatory framework.

The CHT Peace Accord of 1997, signed between the Awami League government of Sheikh Hasina and the PCJSS, represented an attempt to resolve the CHT conflict through a negotiated political settlement that would restore a degree of autonomy to the indigenous communities and protect their land rights. The accord created a Regional Council for the CHT with significant autonomous powers, required the withdrawal of military camps from the region, provided for the rehabilitation of displaced indigenous communities, and established a Land Commission to resolve land disputes arising from the settlement of Bengali settlers in the CHT.

The constitutional validity of the CHT Peace Accord was challenged before Bangladesh's courts, and the resulting jurisprudence raises fundamental questions about the constitutional status of minority and indigenous rights that Mahmudul Islam's framework illuminates but does not fully resolve. The central constitutional question was whether the CHT Peace Accord's creation of special institutions for indigenous communities and its restrictions on the settlement of non-indigenous peoples in the CHT were compatible with the constitutional provisions on equality and non-discrimination, which on their face prohibit differential treatment on grounds of race or ethnicity. The answer to this question depends on how one analyzes the concept of equality in the context of a historically disadvantaged community whose cultural survival and economic welfare depend on the maintenance of a special territorial relationship that is inconsistent with the general principle of free movement and settlement.

Mahmudul Islam's constitutional framework provides analytical tools for this question through his concept of "substantive equality," which he distinguished from "formal equality" in his treatment of Articles 27 and 28. Formal equality requires that all persons be treated identically regardless of their circumstances. Substantive equality recognizes that treating different situations identically may produce outcomes that are substantively unequal, and that genuine equality sometimes requires differential treatment that takes account of the different circumstances of different groups. This concept of substantive equality, which has been developed extensively in comparative constitutional jurisprudence including in the Supreme Court of India's affirmative action decisions and in the South African Constitutional Court's equality jurisprudence, provides a constitutional foundation for the special protections that the CHT Peace Accord sought to create for indigenous communities.

The problem, as Mahmudul Islam would have recognized, is that Bangladesh's courts have not consistently or coherently applied the concept of substantive equality to the CHT situation. The Peace Accord has been only partially implemented; the Land Commission has not functioned effectively; Bengali settlements in the CHT continue to encroach on indigenous community lands; and the constitutional protection of indigenous land rights remains more aspiration than reality. The constitutional reform agenda of 2024-2026 has included some attention to the rights of indigenous communities, including proposals for their recognition in the constitutional text, but the fundamental land rights questions remain unresolved.

14.4 Environmental Constitutionalism and the Right to a Healthy Environment as an Economic Right

One of the most significant developments in constitutional law in the twenty-first century, with direct relevance to Bangladesh's constitutional economy, has been the emergence and consolidation of environmental constitutionalism: the body of constitutional doctrine and practice that recognizes the right to a healthy environment as a constitutional right, enforceable through the courts, and that imposes on the state constitutional obligations to protect the natural environment on which human life and economic activity depend.

Environmental constitutionalism has particular salience for Bangladesh because it is one of the most environmentally vulnerable countries in the world. Its low-lying geography makes it acutely exposed to the impacts of sea-level rise and increased storm intensity associated with climate change. Its river systems, which are the ecological foundation of its agriculture and fisheries, are severely degraded by upstream water management decisions over which Bangladesh has limited control, by industrial pollution, and by over-extraction. Its air quality, particularly in Dhaka and other major urban centers, is among the worst in the world. And its coastal communities, including those in the Sundarbans mangrove forest, the largest mangrove forest in the world and a UNESCO World Heritage Site, are facing existential threats from a combination of climate change, industrial development, and state-facilitated environmental degradation.

Mahmudul Islam addressed environmental rights in his constitutional law book primarily through the lens of the right to life in Article 32. He drew on the Indian Supreme Court's path-breaking environmental rights jurisprudence, which had read the right to life in Article 21 of the

Indian Constitution as including the right to a healthy environment, and he applied this reasoning to Bangladesh's constitutional framework. The key cases in the Indian tradition, including *Subhash Kumar v. State of Bihar* (1991), where the Supreme Court held that the right to life included the right to enjoyment of pollution-free water and air, and *M.C. Mehta v. Union of India* (1987), where the court established the principle of absolute liability for enterprises engaged in hazardous activities, provided the doctrinal foundation for Islam's argument that Bangladesh's courts could and should read an environmental dimension into the constitutional right to life.

Bangladesh's courts have, in fact, been willing to use the writ jurisdiction under Article 102 to address environmental rights claims, though less systematically and less ambitiously than the Indian Supreme Court. There are significant decisions in which the High Court Division has ordered the government to enforce environmental protection laws, required the closure of industrial facilities causing environmental pollution, and directed the government to take measures to protect rivers and water bodies from degradation. These decisions have been particularly significant in relation to the Buriganga River, which flows through Dhaka and which has been reduced to an open sewer by industrial and municipal pollution, and in relation to the Sundarbans, where industrial development projects, including the controversial Rampal coal-fired power plant, have threatened the ecological integrity of the UNESCO World Heritage Site.

The constitutional economy dimension of environmental rights is directly relevant to the material conditions of Bangladesh's population. The degradation of rivers and water bodies affects the livelihoods of millions of fishers, agricultural workers, and communities dependent on clean water. Air pollution in urban areas imposes massive health costs and productivity losses. The destruction of the Sundarbans removes the natural protection that the mangrove forest provides against cyclones and storm surges for millions of coastal dwellers. Climate change threatens to inundate vast areas of Bangladesh's low-lying coast and river delta, displacing tens of millions of people from their homes and livelihoods. These are not merely environmental issues. They are constitutional issues about the state's obligation to protect the conditions that make a dignified economic life possible for its citizens.

The constitutional reform agenda of 2024-2026 has included proposals for an explicit environmental rights provision in the Constitution, reflecting a recognition that the reading of environmental rights into the right to life, while useful, is an indirect and imperfect constitutional mechanism that would be better replaced by a direct constitutional guarantee. The Constitutional Reform Commission recommended the inclusion of an explicit right to a healthy environment in the proposed merged "Fundamental Rights and Freedoms" chapter, a recommendation that reflects the global trend toward explicit constitutional environmental rights provisions that has accelerated in the twenty-first century. As of 2026, more than 150 countries have included some form of environmental protection in their constitutional texts, a dramatic increase from the handful of countries that had done so in the 1970s.

CHAPTER FIFTEEN: THE CONSTITUTIONAL ECONOMY OF MARKETS, DEVELOPMENT, AND INEQUALITY

15.1 The Constitutional Framework for Economic Governance: Between the Plan and the Market

The constitutional framework for economic governance in Bangladesh has evolved dramatically over the five decades since independence, moving from the explicitly socialist, plan-oriented framework of the 1972 Constitution to the more market-friendly framework that emerged through the constitutional amendments and economic policy reforms of the 1980s and 1990s, and then facing new constitutional questions in the context of the post-2008 global financial crisis, the labor rights pressures associated with the garment industry, and the constitutional reform agenda of 2024-2026. Understanding this evolution requires attention to the interaction between the constitutional text, the economic policy choices of successive governments, and the jurisprudential responses of the courts.

The original 1972 Constitution established a constitutional framework for economic governance that was explicitly socialist in its orientation. Article 13 established state ownership as one of the three permissible forms of ownership of the means of production and distribution. Article 42 prohibited the concentration of wealth. Article 20 established the constitutional principle of payment according to work. And the directive principles of Part II established a range of state obligations relating to the promotion of economic development, the equitable distribution of its benefits, and the protection of workers, peasants, and other economically vulnerable groups.

This socialist constitutional framework was implemented through a policy of widespread nationalization in the early years of Bangladesh's independence. The banks, insurance companies, major industrial enterprises, and foreign trade were all brought under state ownership or control. The private sector was severely restricted. Foreign private investment was largely excluded from the economy. The state attempted to coordinate economic activity through a planning apparatus modeled on the Soviet central planning tradition, though without the institutional capacity to make central planning effective in a country of Bangladesh's size, complexity, and poverty.

The results of this socialist experiment were, by most economic assessments, disappointing. Nationalized enterprises were plagued by inefficiency, political interference, and corruption. Agricultural productivity stagnated. The planning apparatus proved unable to coordinate the complex decisions required to manage a large and diverse economy. Foreign aid, which Bangladesh depended on for a substantial portion of its development financing, was subject to increasing pressure from Western donors and international financial institutions to move toward market-oriented economic policies.

The shift toward market-oriented economic policy began under General Ziaur Rahman in the late 1970s and accelerated under General Ershad in the 1980s and the elected governments that followed in the 1990s. The constitutional framework for this shift was provided partly by the fifth amendment, which (among many other changes) modified the constitutional emphasis on socialism, and partly by a reinterpretation of the surviving constitutional provisions relating to the economy in ways that were compatible with market-oriented policies. The nationalization provisions were de-emphasized; the private sector was opened to more extensive domestic and foreign investment; state enterprises were privatized or reformed; and the economic planning

apparatus was reoriented from central direction of the economy toward more market-compatible indicative planning.

Mahmudul Islam's treatment of this economic policy transition in his constitutional law book is notable for its analytical care and its political restraint. He did not write as an economist assessing the merits of socialist versus market economic policies. He wrote as a constitutional lawyer asking how the constitutional framework should be understood in light of the economic policy changes that had occurred. His answer was characteristically nuanced. The constitutional text, as amended, no longer required the state to pursue an explicitly socialist economic policy, but it did retain a set of constitutional obligations relating to the equitable distribution of economic resources, the protection of workers, and the reduction of economic inequality that were incompatible with a purely laissez-faire approach to economic governance. The constitutional order that emerged from the successive amendments was not a constitutional socialism but it was not a constitutional liberalism either. It was a constitutional mixed economy, in which the state had both the authority to manage economic activity and the obligation to ensure that economic management served the welfare of all citizens rather than merely the interests of those with the economic power to benefit from market outcomes.

15.2 The Constitutional Status of Public Enterprises and the Privatization Debate

One of the most contested constitutional economics questions in Bangladesh's recent history has been the privatization of state-owned enterprises and the constitutional constraints, if any, on the state's power to transfer publicly owned assets to private ownership. The privatization program that accelerated in the 1990s raised fundamental constitutional questions about the state's power to dispose of public assets, about the conditions under which such disposals were constitutionally valid, and about the constitutional interests of workers in state enterprises whose jobs were at risk of elimination as a result of privatization.

The constitutional framework for privatization is primarily located in Article 13, which authorizes state ownership as one of the permissible forms of ownership. Article 13 does not require state ownership; it permits it. The question is whether, having established state ownership of particular industries or enterprises, the government is constitutionally free to reverse that decision and transfer ownership to private parties without any constitutional constraint beyond the general requirements of legislative authority and compliance with fundamental rights.

Mahmudul Islam's analysis of this question drew on both the text of the Constitution and on comparative constitutional analysis. He noted that the directive principles of Part II imposed on the state an obligation not to allow the concentration of wealth and means of production in the hands of a small number of individuals, and that the constitutional validity of any particular privatization measure depended at least in part on whether it was likely to result in such concentration. A privatization program that distributed shares in formerly state-owned enterprises widely among the population, enabling broad popular participation in ownership, was constitutionally more defensible than a privatization program that simply transferred state assets to connected private parties at below-market prices, effectively converting public wealth into private wealth for the benefit of a politically favored economic elite.

This constitutional analysis of privatization connects directly to one of the most significant economic governance controversies of Bangladesh's recent history: the allegation that the privatization programs of the 1980s and 1990s were systematically corrupted by the political economy of crony capitalism, in which state assets were transferred to private parties connected to the political leadership at prices that did not reflect their true value, resulting in a massive transfer of public wealth to private hands that was both economically inefficient and constitutionally dubious.

The constitutional dimensions of this crony capitalism critique were not fully developed in Bangladesh's courts during the period when the privatization programs were most active, partly because the political and institutional conditions that would have enabled effective constitutional litigation against the government's economic choices were not present, and partly because the constitutional framework for judicial review of economic policy was not sufficiently developed to provide a doctrinal basis for challenging the specific forms of corruption that characterized the privatization process. But Mahmudul Islam's constitutional framework, with its insistence that the directive principles imposed genuine constitutional obligations on the state in the economic domain, provides at least the analytical foundation for a more robust constitutional scrutiny of economic governance decisions of this kind.

15.3 Microfinance, Poverty, and the Constitutional Right to Participate in the Economy

One of the most distinctive features of Bangladesh's economic history since independence has been the development of the microfinance sector, led by institutions such as Grameen Bank, BRAC, and ASA, which have provided small loans to millions of poor Bangladeshis, primarily women, who were excluded from the formal financial system. The microfinance model has been hailed internationally as one of the most significant innovations in development finance of the twentieth century, and Grameen Bank's founder Muhammad Yunus was awarded the Nobel Peace Prize in 2006 in recognition of the model's contribution to poverty reduction.

The constitutional implications of the microfinance sector are complex and have been underexplored in Bangladesh's constitutional jurisprudence. At one level, microfinance represents a private sector solution to a problem that the Constitution assigns to the state: Article 15 of the Constitution establishes the right to work, to adequate nutrition, to clothing, to shelter, and to medical care as fundamental principles of state policy, and Article 14 commits the state to "emancipating the toiling masses from all forms of exploitation." The success of microfinance in addressing some aspects of economic vulnerability raises the question whether the state has satisfied its constitutional obligations by creating the enabling conditions for private microfinance to flourish, or whether those obligations require direct state action to provide the economic goods that Part II identifies as state responsibilities.

Mahmudul Islam did not address microfinance directly in his constitutional law book, but his constitutional framework provides analytical tools for thinking about the constitutional significance of this sector. The concept of state obligation that he developed from the directive principles was not, in his view, a mandate for exclusively state-provided economic goods. States could satisfy their constitutional obligations through a variety of mechanisms, including creating the enabling framework for civil society and private sector provision of services that the

constitutional text identifies as state responsibilities. What the constitution required was not state provision per se but effective provision: the actual availability to citizens of the economic goods that the directive principles identified as matters of state responsibility.

On this analysis, the constitutional status of the microfinance sector depends on whether it actually delivers the economic goods that the directive principles promise to all citizens. The evidence on this question is mixed. Microfinance has undoubtedly improved the economic position of many of its borrowers, particularly women who would otherwise have had no access to credit at all. But it has also been criticized for charging high interest rates that can trap borrowers in cycles of debt, for favoring the not-quite-poorest over the very poorest who are too economically precarious to meet loan repayment requirements, and for failing to address the structural causes of poverty, including the land distribution, labor market conditions, and public service failures that determine the economic options available to poor Bangladeshis.

The 2011 controversy over Grameen Bank, when the Hasina government moved to remove Yunus from the bank's leadership and eventually sought to restructure the bank in ways that would bring it under greater state control, raised constitutional questions about the right to property (in the form of the bank's institutional autonomy), the right to equality (in the context of allegations that the government's actions were politically motivated), and the broader constitutional framework for civil society institutions and their relationship to the state. Mahmudul Islam's constitutional framework, with its insistence on the need for independent institutions that are genuinely free from political interference, provides the analytical foundation for a constitutional defense of Grameen Bank's institutional autonomy, though the specific constitutional provisions through which that defense could be mounted were less clear.

15.4 The Reforming Constitution and Economic Rights: The 2025 Constitutional Reform Commission's Proposals

The most radical proposal in the Constitutional Reform Commission's report of January 2025 with respect to the economic dimension of the Constitution was the recommendation to merge Parts II and III of the Constitution into a single chapter of "Fundamental Rights and Freedoms" that would be fully justiciable. This proposal, if implemented, would represent the most significant transformation of Bangladesh's constitutional economic framework since the adoption of the 1972 Constitution. It would make justiciable not merely the civil and political rights of the existing Part III but the social and economic rights currently in Part II, including the right to work, the right to education, the right to adequate nutrition, the right to health care, and the right to social security.

The constitutional philosophy behind this recommendation drew directly from the global trend toward the constitutional recognition of social and economic rights as fully justiciable rights rather than merely directive principles. This trend has been particularly marked in post-authoritarian constitutional systems that have adopted new constitutions since the late 1980s, including South Africa's 1996 Constitution, which is widely regarded as the most sophisticated contemporary model for the constitutionalization of social and economic rights, as well as the constitutions of Colombia, Brazil, Portugal, and numerous other countries that have included strong economic rights provisions.

The South African model is particularly instructive for understanding both the potential benefits and the significant challenges of the proposal to merge Parts II and III of Bangladesh's Constitution. South Africa's 1996 Constitution includes fully justiciable rights to housing (Section 26), to health care, food, water, and social security (Section 27), to education (Section 29), and to various children's rights (Section 28). These rights have been enforced by the South African Constitutional Court in a series of landmark decisions, most notably *Government of the Republic of South Africa v. Grootboom* (2001), in which the court held that the state had violated the constitutional right to housing by failing to provide adequate shelter to a community living in desperately inadequate conditions, and *Minister of Health v. Treatment Action Campaign* (2002), in which the court ordered the government to make available an antiretroviral drug to prevent mother-to-child transmission of HIV across the entire public health system rather than only in a limited number of pilot sites.

The South African jurisprudence on socioeconomic rights has generated an enormously rich academic literature, and it has been both celebrated and criticized from multiple directions. Its admirers argue that the Constitutional Court's willingness to enforce socioeconomic rights has made those rights real for millions of South Africans who would otherwise have had no constitutional recourse against the state's failure to provide for their basic needs. Its critics argue that the court's adoption of a "reasonableness review" standard rather than a "minimum core" standard has made the rights too deferential to legislative and executive discretion, that the court's decisions have had limited practical impact on the actual delivery of housing, health care, and other social services to the poor, and that the constitutionalization of economic rights has created false expectations about what judicial enforcement can achieve in a context of severe resource constraints.

Mahmudul Islam's constitutional framework is relevant to evaluating both sides of this debate. His insistence on the constitutional importance of the directive principles, and his argument that those principles imposed genuine obligations on the state that the courts should enforce through indirect means where direct enforcement was constitutionally constrained, anticipated the approach that the South African Constitutional Court has in fact taken. His emphasis on the institutional limits of judicial capacity to make economic policy suggests that he would have been sympathetic to the court's adoption of a reasonableness review standard that gives the elected branches primary responsibility for determining how to implement economic rights, while reserving judicial intervention for cases where the state's failure to take reasonable measures toward the progressive realization of those rights amounts to a constitutional violation.

At the same time, Mahmudul Islam's consistent emphasis on the importance of constitutional effectiveness, on the gap between constitutional aspiration and constitutional reality, and on the need for a constitutional order that actually improves the material conditions of ordinary citizens would have made him a demanding critic of constitutional arrangements that allow the state to satisfy its economic rights obligations by taking minimal and largely inadequate steps toward their realization. The "reasonableness" standard that the South African Constitutional Court has applied has been criticized precisely because it sets the bar for constitutional compliance very low, permitting the state to avoid constitutional accountability for systematic failures to deliver the economic goods that the Constitution promises, provided it can show that it has a policy in place that is "reasonable" in the abstract even if it is manifestly inadequate in practice.

The Constitutional Reform Commission's proposal to merge Parts II and III of Bangladesh's Constitution was not simply a technical textual amendment. It reflected a constitutional philosophy that took seriously the argument that the civil-political/economic-social distinction embedded in the existing constitutional structure was both philosophically untenable and practically harmful, and that Bangladesh's constitutional future required a framework in which all human rights, whether civil, political, social, or economic, were treated as equally fundamental, equally enforceable, and equally important to the realization of the constitutional aspiration to human dignity.

This is, in important respects, a vindication of the constitutional philosophy that Mahmudul Islam developed throughout his career. His critique of the sharp distinction between Parts II and III, his argument that the courts should use the justiciable rights of Part III to give practical effect to the non-justiciable principles of Part II, and his insistence that a constitution that protected formal political rights while leaving the material conditions of economic life to the vicissitudes of the market and the political will of successive governments was a constitution that had failed its most fundamental purpose, all of these arguments pointed toward exactly the kind of integrated, comprehensive rights framework that the Constitutional Reform Commission has now proposed.

15.5 The Global Constitutional Economy and Bangladesh: Comparative Perspectives on 2024-2026 Reforms

The constitutional reform debate in Bangladesh in 2024-2026 has taken place against the backdrop of a global conversation about the constitutional foundations of economic governance that has been reshaped by several major intellectual and political developments of the twenty-first century. Understanding Bangladesh's constitutional reform in its global context is essential for appreciating both the significance of the proposals and the challenges they face.

The first major development is the global financial crisis of 2008-2009 and its aftermath. The crisis challenged the intellectual foundations of the market fundamentalist approach to economic governance that had dominated global economic policy from the 1980s onward, demonstrating that unregulated financial markets could generate systemic failures with catastrophic consequences for the economic welfare of the majority of the world's population. In the constitutional domain, the crisis generated renewed interest in the constitutional foundations of economic regulation, in the role of constitutional courts in reviewing economic policy decisions, and in the compatibility of austerity policies with constitutional rights to social security, health care, and other social goods.

In Europe, the constitutional implications of austerity were worked out in a series of landmark decisions by national constitutional courts, including the Portuguese Constitutional Court, which struck down several key austerity measures as unconstitutional violations of the right to social security and the principle of the welfare state, and the Irish Supreme Court, which addressed the constitutionality of wage reductions in the public sector. These decisions demonstrated that constitutional courts were willing and able to impose constitutional constraints on economic policy in ways that protected the economic rights of citizens against the fiscal priorities of governments responding to financial crisis.

For Bangladesh, the lessons of the European austerity jurisprudence are both directly relevant and significantly different. Directly relevant because they demonstrate the constitutional possibilities that are opened by making economic rights justiciable and by giving courts the power to review economic policy decisions against constitutional standards. Significantly different because Bangladesh's economic challenges are not primarily the challenges of an advanced capitalist economy managing the aftermath of a financial crisis, but the challenges of a developing country managing the transition from poverty to development while ensuring that the benefits of economic growth are broadly shared rather than captured by a small economic elite.

The second major development is the emergence of the concept of "transformative constitutionalism" as a framework for understanding the role of constitutional courts in post-authoritarian societies with histories of systemic economic inequality. The concept, developed primarily in the context of South African constitutional theory by scholars including Karl Klare, Pius Langa, and Sandra Liebenberg, holds that the constitution of a society emerging from a period of systematic oppression and economic exploitation must be understood as a mandate for structural transformation, not merely a framework for procedural democracy. The constitutional court, on this view, is not merely an umpire adjudicating disputes about the boundaries of governmental power but an active participant in the project of transforming the structures of economic and social life that the authoritarian or colonial past created.

Transformative constitutionalism has clear relevance to Bangladesh's constitutional context. Bangladesh's constitutional history is one of systematic exploitation, first under colonial rule, then under Pakistani domination, then under successive authoritarian governments, and then, in the most recent period, under the Hasina government's authoritarian consolidation of power that was the immediate catalyst of the July 2024 uprising. The 1972 Constitution was, from the beginning, understood by its drafters as a transformative project, a constitutional commitment to building a new and more egalitarian society out of the wreckage of the Liberation War. The failure to fulfill that transformative promise, repeated over five decades, is the constitutional history that the 2024-2026 reform agenda is attempting to address.

The concept of transformative constitutionalism suggests that the constitutional reforms of 2024-2026 should be understood not merely as technical amendments to the constitutional text but as elements of a larger constitutional project of economic and social transformation. The merging of Parts II and III, the creation of enforceable economic rights, the reform of labor law, the constitutional recognition of indigenous rights, and the environmental rights proposals all form part of a coherent transformative constitutional vision, one that takes seriously the constitutional aspiration to human dignity and economic justice that has been articulated in Bangladesh's constitutional text since 1972 but has been systematically undermined by the political and economic forces that have dominated Bangladesh's constitutional life.

The third major development is the global conversation about wealth inequality and its constitutional implications, catalyzed by the work of economists including Thomas Piketty, Joseph Stiglitz, and Anthony Atkinson and by the political movements that have challenged the distributional consequences of neoliberal economic policy in multiple countries. Piketty's "Capital in the Twenty-First Century" (2013) and its sequels demonstrated empirically that the wealth concentration dynamics of market capitalism tend, in the absence of active redistributive

intervention, to produce levels of inequality inconsistent with any plausible conception of democratic equality. The constitutional implications of this analysis are significant: if the market systematically produces extreme inequality, and if extreme inequality is incompatible with the constitutional values of equality, dignity, and democratic self-governance, then the constitutional order must include mechanisms for addressing market-generated inequality that go beyond the formal guarantees of legal equality and political participation.

Mahmudul Islam's constitutional framework anticipated this argument in important respects. His analysis of the directive principles relating to inequality, his critique of the constitutional framework's failure to hold the state accountable for its economic obligations, and his insistence on the constitutional significance of the material conditions of life rather than merely the formal conditions of political participation all reflect an understanding of the relationship between economic inequality and constitutional democracy that subsequent global scholarship has confirmed and deepened. The specific constitutional mechanisms for addressing economic inequality that the 2024-2026 reform agenda proposes, including the justiciable economic rights, the constitutional protection of labor rights, and the enhanced anti-corruption institutions, can all be understood as attempts to give institutional form to the constitutional philosophy that Mahmudul Islam spent his career articulating.

15.6 The Anti-Corruption Commission and Constitutional Accountability for Economic Governance

One of the most important institutional proposals in the 2024-2026 constitutional reform agenda, directly relevant to the constitutional economy, is the proposal to elevate the Anti-Corruption Commission (ACC) to the status of a constitutional body with independent funding, security of tenure for its commissioners, and protection from political interference. The constitutional significance of this proposal for the economic dimension of Bangladesh's constitutional framework is substantial.

Corruption is not merely an economic problem. It is a constitutional problem of the first order. When public officials use their positions to extract private benefit from the exercise of public power, whether through bribery, embezzlement, nepotism, or the manipulation of regulatory decisions for personal gain, they violate not merely the criminal law but the constitutional principles of equality before the law, protection of law, and the democratic accountability of public officials to the citizens they serve. When corruption pervades the state apparatus to the degree that it has in Bangladesh, it effectively creates a parallel constitutional order in which the formal constitutional provisions are systematically undermined by the informal practices of extraction and clientelism that determine how public power is actually exercised.

The constitutional implications of corruption for the economic framework of the 1972 Constitution are far-reaching. The directive principles of Part II require the state to promote equitable economic development, to reduce inequality, and to protect the economic rights of workers, peasants, and the poor. But a state apparatus that is systematically corrupted is incapable of implementing these obligations honestly and effectively. Land reform is subverted by corrupt land officials who sell the rights to khas land to connected parties rather than distributing them to the landless as the law requires. Labor protection is undermined by factory

inspectors who accept bribes to ignore safety violations. Environmental regulation is neutralized by officials who permit illegal industrial pollution in exchange for payments. Public procurement is manipulated to channel contracts to politically connected firms at inflated prices, wasting public resources that should be invested in the schools, hospitals, and infrastructure that the constitutional directive principles require.

Mahmudul Islam was acutely aware of the relationship between corruption and constitutional failure. He wrote about corruption not merely as a moral failing but as a constitutional problem, arguing that a state unable to enforce its own laws and regulations on behalf of the public interest was a state that had failed in its most fundamental constitutional responsibilities. His concept of constitutional accountability extended beyond the formal processes of electoral democracy and judicial review to encompass the practical capacity of the state to implement the constitutional obligations it had undertaken, a capacity that systemic corruption fundamentally undermined.

The proposal to constitute the ACC as a constitutional body, with the protections for its independence and accountability that constitutional status would provide, directly addresses the constitutional dimension of the corruption problem. A constitutionally independent ACC would have the institutional security to investigate and prosecute corruption cases regardless of the political implications of those cases, including cases involving members of the governing party and their economic allies. Its findings would carry greater constitutional authority than those of a statutory body that is vulnerable to legislative modification or executive pressure. And its constitutional mandate would provide the legal foundation for the kind of sustained, systematic, and politically impartial anti-corruption enforcement that Bangladesh has conspicuously lacked throughout most of its history.

The constitutional reform of the ACC is, on this analysis, not merely an institutional reform. It is a constitutional commitment to closing the gap between the economic rights and obligations articulated in the constitutional text and the economic realities of a state whose capacity to implement those obligations has been systematically eroded by decades of corruption. It represents, in Mahmudul Islam's terms, an attempt to make the constitutional provisions relating to economic justice constitutionally real rather than merely constitutionally aspirational.

CHAPTER SIXTEEN: THE PHILOSOPHY OF ECONOMIC CONSTITUTIONALISM: MAHMUDUL ISLAM'S CONTRIBUTION TO GLOBAL THOUGHT

16.1 Beyond Formalism: Islam's Contribution to Constitutional Method

The significance of Mahmudul Islam's contribution to the jurisprudence of economic constitutionalism extends beyond his specific analyses of Bangladeshi constitutional provisions. It extends to his contribution to constitutional method, to the way in which constitutional law should be understood and applied in a society marked by economic inequality and developmental challenge. This methodological contribution deserves explicit attention because it is at once the most distinctive and the most underappreciated dimension of his constitutional thought.

The dominant tradition of constitutional interpretation in the common law world, at least in its classical form, was what might be called the formal-textual tradition. On this approach, the

constitution is a text, and the task of constitutional interpretation is to determine what the text means, using the standard tools of legal interpretation: consideration of the ordinary meaning of the words, attention to the historical context and the intentions of the drafters, consistency with the structure and scheme of the document as a whole, and adherence to precedent in cases where earlier courts have already interpreted the relevant provisions. The formal-textual tradition is conservative in its orientation, preferring settled interpretations to innovations, deferring to the democratic branches on contested policy questions, and treating the constitution as a constraint on governmental action rather than a mandate for it.

Mahmudul Islam was deeply familiar with the formal-textual tradition. His book is full of careful textual analysis, close attention to the language of constitutional provisions, and respect for the interpretive guidance provided by the structure of the constitutional text. He was not a constitutional adventurer who used the language of constitutional interpretation to smuggle in substantive policy preferences that had no basis in the constitutional text. His analytical rigor was, indeed, one of the most admired features of his scholarship, the quality that earned him the respect of judges, lawyers, and scholars who were themselves committed to the formal-textual tradition.

But Islam was not a formalist in any simple sense. His constitutional method was purposive rather than merely textual. He consistently asked not merely what the constitution says but what it is for, what purposes it serves, and whether the interpretation being advanced advances or subverts those purposes. His concept of constitutional purpose was itself not simplistic: he recognized that a constitution may serve multiple purposes that are sometimes in tension, that different constitutional provisions may reflect different and potentially conflicting values, and that the task of constitutional interpretation in such cases is not to choose one value over all others but to find the interpretation that best gives effect to the full range of constitutional values in the specific context at hand.

This purposive method had a specific orientation in the economic domain. Islam understood the constitutional purpose of the economic provisions, both of Part II and of the economic-related provisions of Part III, to be the advancement of human welfare and dignity: the creation of the material conditions that enabled ordinary Bangladeshis to live lives worthy of the constitutional aspiration to human dignity that animated the 1972 Constitution. An interpretation of the constitutional right to property that allowed it to be used as a weapon against land reform, an interpretation of the freedom of contract that permitted the exploitation of workers through unconscionable employment terms, an interpretation of the economic governance provisions that allowed corrupt officials to systematically divert public resources to private benefit: all of these interpretations, however defensible they might appear in purely formal-textual terms, were constitutionally wrong precisely because they subverted the constitutional purpose of advancing the welfare and dignity of Bangladesh's people.

This purposive orientation gave Islam's constitutional method a critical dimension that distinguished it from more deferential approaches to constitutional interpretation. He was willing to subject legislative and executive economic decisions to constitutional scrutiny, not merely for compliance with the formal requirements of the constitutional text, but for consistency with the substantive purposes that the constitution was designed to serve. He was willing to argue that a

constitutionally valid form could be used in a constitutionally invalid way, that a law enacted through all the proper formal procedures could nevertheless be unconstitutional if it served purposes that were incompatible with the constitution's fundamental commitments. And he was willing to argue that courts, properly understanding their constitutional role, should be the guardians of constitutional substance as well as constitutional form.

16.2 The Indivisibility of Rights: Economic and Political Freedoms in Constitutional Theory

One of the most philosophically significant aspects of Mahmudul Islam's constitutional thought is his implicit, and occasionally explicit, commitment to the indivisibility of rights, the principle that civil and political rights and economic and social rights are not two separate categories of human entitlement but aspects of a single commitment to human dignity that must be realized together if either is to be genuinely meaningful.

The indivisibility of rights principle has been articulated most forcefully in international human rights law, particularly in the Vienna Declaration and Programme of Action of 1993, which declared that "all human rights are universal, indivisible and interdependent and interrelated." But it has important constitutional implications as well. If civil and political rights and economic and social rights are genuinely indivisible, then a constitutional order that protects the former while failing to protect the latter is not simply incomplete. It is constitutionally incoherent, because the political rights it protects cannot be genuinely exercised by people who lack the material conditions necessary for meaningful participation in political life.

This argument has been developed with particular force by the philosopher Amartya Sen in his "capability approach" to human development, most fully articulated in "Development as Freedom" (1999). Sen argues that freedom, properly understood, is not merely the absence of formal restrictions on individual choice but the genuine capability to choose and to act across the full range of activities that constitute a good human life. On this view, a person who is formally free from legal restrictions on her economic choices but who lacks the material resources, the education, the health, and the security necessary to exercise meaningful economic choice is not genuinely free in any sense that matters. Constitutional guarantees of formal economic freedom, like the freedom of contract or the freedom of profession in Bangladesh's Article 40, are meaningless to a person who lacks the capability to exercise them.

Mahmudul Islam's constitutional thought reflects a deep engagement with this insight, though he expressed it in constitutional-legal rather than philosophical terms. His insistence on reading economic content into the justiciable fundamental rights, his critique of the formal-textual approach that would limit constitutional protection to the specific forms identified in the constitutional text, and his consistent attention to the material conditions of life rather than merely the formal conditions of legal status all reflect the same fundamental commitment to a constitutional order in which rights are genuinely exercised rather than merely formally guaranteed.

The 2024-2026 constitutional reform agenda has made the indivisibility of rights principle constitutionally explicit through the Constitutional Reform Commission's proposal to merge

Parts II and III into a single chapter of enforceable rights. This proposal represents the most direct institutional expression to date of the constitutional philosophy that Mahmudul Islam spent his career developing. Its implementation would create, for the first time in Bangladesh's constitutional history, a constitutional framework in which the economic conditions necessary for the genuine exercise of civil and political rights are as constitutionally protected as those civil and political rights themselves.

16.3 Mahmudul Islam and the Global Debate About Constitutional Economic Governance: Hayek, Rawls, and Beyond

To fully appreciate the intellectual significance of Mahmudul Islam's contribution to constitutional economic theory, it is worth situating his thought in the context of the broader global debate about the constitutional foundations of economic governance that has been conducted, largely in Anglo-American philosophy and political theory, from the mid-twentieth century to the present. The central protagonists of this debate include Friedrich Hayek, John Rawls, and a range of subsequent thinkers who have built on, criticized, and extended their foundational contributions.

Friedrich Hayek's contribution to the constitutional theory of economic governance, most fully developed in "The Constitution of Liberty" (1960) and "Law, Legislation and Liberty" (three volumes, 1973-1979), was to argue that constitutional government was primarily and essentially the government of general rules rather than the government of specific outcomes. On Hayek's view, a constitutional order committed to the rule of law must limit itself to establishing and enforcing the general rules that define property rights, enforce contracts, and protect individuals from aggression; it must not attempt to direct economic outcomes, redistribute wealth, or guarantee access to specific economic goods. The attempt to use the constitutional order to achieve distributive justice, on Hayek's account, inevitably subverts the rule of law, concentrates power in the hands of the redistributing authority, and ultimately destroys the conditions for genuine freedom.

Hayek's constitutional theory has been enormously influential, particularly in the Anglo-American legal tradition, and it finds expression in the constitutional frameworks of countries that have been most closely shaped by that tradition, including the United States' strong constitutional protection of property rights and its skepticism of economic regulation. But it has also been deeply criticized, both on philosophical grounds and on the basis of its historical record. The philosophical critique, developed most powerfully by John Rawls, is that Hayek's concept of freedom systematically ignores the background conditions of fair distribution without which formal freedom is meaningless. The historical critique is that the "rule of law" economic framework that Hayek advocated has, in practice, produced levels of economic inequality that are incompatible with the democratic self-governance and political equality that constitutional government is supposed to protect.

John Rawls's contribution to the constitutional theory of economic governance, developed primarily in "A Theory of Justice" (1971) and "Political Liberalism" (1993), was to argue that a just constitutional order must satisfy two principles of justice: the equal basic liberties principle, which requires that all citizens have an equal set of basic political and civil rights, and the

difference principle, which requires that economic inequalities be arranged so as to benefit the least advantaged members of society. For Rawls, the difference principle has direct constitutional implications: a constitutional order that does not include mechanisms for ensuring that economic inequality is arranged to benefit the worst-off is not merely economically unjust but constitutionally illegitimate, because it fails to provide all citizens with the fair value of their political rights, which requires more than merely formal equality.

Mahmudul Islam's constitutional philosophy occupies a distinctive position in relation to both Hayek and Rawls. Against Hayek, he maintained that a constitutional order genuinely committed to human dignity and freedom cannot be satisfied with the mere formal protection of property rights and freedom of contract; it must attend to the material conditions that make the exercise of those rights meaningful, and it must use the full range of its constitutional authority to ensure that those conditions are present. Against Rawls, he expressed through the specific institutional and doctrinal analyses of his book rather than through abstract philosophical argument a concern for the actual constitutional mechanisms through which economic justice could be pursued, the institutional design questions about courts, legislatures, and administrative agencies that determined whether constitutional commitments to economic justice were practically effective.

The constitutional philosophy that emerges from Islam's work is one that might be described as constitutional pragmatism in the service of constitutional values. It is pragmatic in its attention to institutional capacity and constitutional design, in its recognition that courts cannot do everything and that the legislature and executive must bear the primary responsibility for implementing the economic dimensions of the constitutional order. It is value-committed in its insistence that the constitution makes genuine demands on the state in the economic domain, that those demands are not merely aspirational, and that a constitutional order that consistently fails to meet them has failed in a constitutionally significant way.

This combination of pragmatic constitutional realism and substantive constitutional commitment is precisely what the current moment in Bangladesh's constitutional history requires. The 2024-2026 reform agenda faces the challenge of creating constitutional institutions that are genuinely capable of implementing the economic rights and obligations that the constitutional text aspires to, in a context of significant institutional capacity constraints, political uncertainty, and economic pressure from international actors whose interests do not always align with the constitutional values of economic justice. Meeting this challenge requires exactly the kind of constitutional thought that Mahmudul Islam spent his career developing: rigorous, historically informed, institutionally sensitive, and animated by an uncompromising commitment to the constitutional aspiration to human dignity and economic justice.

16.4 The Social Contract and Economic Constitutionalism: Philosophical Foundations in Bangladesh's Context

The relationship between the social contract tradition in political philosophy and the constitutional framework for economic governance deserves extended analysis in the context of Mahmudul Islam's thought and Bangladesh's constitutional history, because it connects the abstract philosophical foundations of constitutional authority to the specific institutional and doctrinal questions that Mahmudul Islam addressed throughout his career.

The social contract tradition, originating with Hobbes, Locke, and Rousseau and extended and modified by Kant, Rawls, and numerous contemporary philosophers, grounds constitutional authority in a hypothetical agreement among free and equal persons about the terms on which they will live together under a common system of government. The constitutional text, on this tradition, is not merely a technical document specifying the organization of governmental institutions. It is the expression of the terms of the social contract that the political community has made with itself, the foundational agreement through which the members of the community have committed to govern themselves on the basis of certain shared principles.

The economic implications of the social contract tradition are significant. A social contract among free and equal persons must, at minimum, provide all parties with the conditions necessary for their effective participation in the contract itself: parties who lack the economic resources to participate meaningfully in the political processes through which the terms of the contract are determined, revised, and applied are not genuinely parties to the contract but merely subjects of it. This suggests that a constitutional order grounded in social contract theory must include provisions ensuring that all citizens have the material conditions necessary for genuine political participation, including not merely the formal right to vote but the education, information, economic security, and freedom from domination that effective participation requires.

Mahmudul Islam did not explicitly develop a social contract theory of Bangladesh's Constitution. His constitutional method was too empirical and too practically oriented for the high level of abstraction that social contract theory typically requires. But his constitutional thought is implicitly grounded in a social contract conception of constitutional authority. His insistence that the constitution must actually benefit the people in whose name it is written, his critique of constitutional arrangements that formally guarantee rights while systematically failing to provide the conditions for their genuine exercise, and his concern for the constitutional status of the economically vulnerable all reflect a conception of constitutional authority as resting on genuine reciprocity between the state and its citizens, a reciprocity that is violated when the state systematically uses constitutional authority to serve the interests of the powerful while neglecting the needs of the poor.

This social contract dimension of Islam's constitutional thought has particular resonance in the context of the July 2024 uprising and the constitutional reform agenda it has generated. The uprising was, in important respects, a popular repudiation of a constitutional order that had failed to honor the terms of the social contract: a constitutional order that had permitted authoritarianism, corruption, and systematic economic inequality to flourish while formally guaranteeing democratic rights and economic justice. The constitutional reform agenda of 2024-2026, viewed through the lens of social contract theory, is an attempt to renegotiate the terms of the constitutional social contract, to create a constitutional framework that more genuinely reflects the interests and aspirations of the full range of Bangladesh's citizens rather than merely those of the economically and politically powerful.

The success of this renegotiation depends, as Mahmudul Islam's constitutional framework consistently emphasizes, not merely on the content of the constitutional text but on the institutional and cultural conditions that determine whether that text is genuinely implemented. A

social contract that exists only in constitutional documents but not in the actual practices of state institutions is not a social contract at all. It is a promise made by the powerful to the powerless that the powerful have no intention of honoring. The history of Bangladesh's constitutional development, as Mahmudul Islam analyzed it, is partly a history of exactly such broken promises. The challenge of the current reform moment is to create the institutional conditions that will make the promises of the reformed constitution genuinely binding on those who hold constitutional power, even when honoring those promises is contrary to their immediate interests.

16.5 The Contribution of Mahmudul Islam to the Comparative Constitutional Law of Economic Rights

The final dimension of Mahmudul Islam's contribution to constitutional thought that deserves attention in this chapter is his contribution to the comparative constitutional law of economic rights: to the body of comparative analysis that examines how different constitutional systems have addressed the challenge of incorporating economic rights into their constitutional frameworks and what lessons can be drawn from those different experiences.

Comparative constitutional analysis was one of Islam's consistent methodological commitments. Throughout his constitutional law book, he drew on the constitutional experience of India, Pakistan, Sri Lanka, Malaysia, the United Kingdom, the United States, Canada, and Australia, among others, to illuminate the options available to Bangladesh in addressing its constitutional challenges. In the domain of economic rights, his comparative analysis focused primarily on the Indian experience, given the close structural and historical relationship between Bangladesh's and India's constitutional frameworks, but he also engaged with the broader global experience of constitutional economic rights protection.

His comparative analysis yielded several important insights. First, the non-justiciability of directive principles does not prevent those principles from being constitutionally significant: the Indian Supreme Court's development of an expansive reading of the right to life that incorporates economic and social content demonstrates that courts in non-justiciability frameworks can develop constitutional doctrines that give practical effect to the aspirations of the directive principles. This comparative insight provided the basis for Islam's argument that Bangladesh's courts could and should adopt a similar approach in interpreting Article 32.

Second, the justiciability of economic rights does not automatically produce economic justice: the South African experience, in which a constitutional framework of justiciable social and economic rights has coexisted with persistently high levels of poverty and inequality, demonstrates that formal constitutional protection, however important, is not sufficient to guarantee the actual realization of economic rights. This comparative insight provided the basis for Islam's insistence that constitutional economic reform must attend to the institutional conditions for effective implementation, not merely to the formal structure of constitutional rights.

Third, the choice between directive principles and justiciable rights is not a binary choice: there are many intermediate constitutional designs that give courts a role in enforcing economic obligations without simply transplanting all economic policy decisions into the judicial domain.

Constitutional provisions that establish minimum core obligations, that require the state to take progressive steps toward the realization of economic rights, and that permit courts to review the reasonableness of the state's approach to implementing those obligations without substituting the court's judgment for the legislature's on specific policy choices: all of these designs represent attempts to give courts a meaningful constitutional role in the economic domain while preserving the primary responsibility of the democratic branches for economic policy.

The Constitutional Reform Commission's proposal to merge Parts II and III, informed as it was by comparative constitutional analysis of the kind that Mahmudul Islam modeled, reflects an attempt to learn from all three of these comparative insights: to create a constitutional framework of justiciable economic rights that is informed by the Indian experience of purposive interpretation, sensitive to the South African lesson about the limits of judicial enforcement, and designed with the intermediate institutional structures that make effective constitutional economic accountability possible without requiring courts to manage the economy.

CONCLUSION TO PART FOUR: THE CONSTITUTIONAL ECONOMY AND THE PROMISE OF REFORM

The Gap Between Aspiration and Reality: An Assessment

As this fourth part of the textbook draws to a close, the central theme that has emerged from the analysis is the persistent and profound gap between the constitutional aspiration to economic justice articulated in Bangladesh's constitutional text since 1972 and the constitutional reality of economic inequality, labour exploitation, environmental degradation, and poverty that has characterized the actual economic life of most Bangladeshis throughout that period. This gap, as Mahmudul Islam consistently argued, is not merely an economic fact. It is a constitutional failure, a systematic falling short of the constitutional order's most fundamental promise to the people in whose name it exists.

The causes of this constitutional failure are multiple and interconnected. The structural design of the 1972 Constitution, which placed the economic rights most relevant to the lives of the poor in the non-justiciable Part II while placing the civil and political rights more relevant to the lives of the propertied and educated in the justiciable Part III, created a constitutional hierarchy that systematically privileged formal over substantive equality. The successive constitutional amendments that followed, particularly the fifth amendment and the eighth amendment, modified the economic constitutional framework in ways that made it more compatible with market-oriented economic policies and less supportive of the redistributive aspirations of the original constitutional design. The systemic corruption of the administrative apparatus that was supposed to implement the constitutional economic obligations undermined whatever practical force those obligations might otherwise have had. And the political dominance of economic elites, who had both the incentive and the capacity to ensure that constitutional economic commitments were interpreted and implemented in ways that served their interests rather than those of the majority, created a constitutional culture that was structurally resistant to the transformative economic potential of the constitutional text.

The constitutional reform agenda of 2024-2026 addresses these causes with varying degrees of directness and effectiveness. The proposal to merge Parts II and III addresses the structural design failure by creating justiciable economic rights. The constitutional elevation of the Anti-Corruption Commission addresses the corruption problem by giving the anti-corruption authority the institutional independence it needs to operate effectively. The reform of the labour law addresses some of the most acute specific violations of economic constitutional rights in the garment sector. The environmental rights proposals address the environmental dimensions of the economic constitutional failure. And the broader institutional reforms, including the reform of judicial appointments, the creation of a bicameral legislature with proportional representation, and the imposition of term limits on the Prime Minister, create the institutional conditions that are prerequisites for any constitutional order to be genuinely responsive to the needs of all its citizens rather than merely those with the most power.

Mahmudul Islam did not live to see the July 2024 uprising or the constitutional reform agenda it has generated. He died in February 2016, eight years before the events that have transformed Bangladesh's constitutional landscape. But the constitutional thought he developed throughout his career provides the most important analytical framework for understanding the significance and the limitations of the current reform moment. His insistence on constitutional effectiveness rather than merely constitutional text, his argument for the genuinely binding character of the economic obligations in Part II, his development of a purposive constitutional method that reads economic content into the justiciable rights of Part III, and his comparative analysis of the constitutional designs that have been most successful in creating genuinely effective economic rights protection: all of these dimensions of his thought illuminate the path that Bangladesh's constitutional reform must follow if it is to achieve the transformative promise that the uprising of July 2024 has renewed.

The test of the current constitutional reform moment will ultimately be whether the gap between constitutional aspiration and constitutional reality that has persisted throughout Bangladesh's history can be substantially closed. Mahmudul Islam spent his career arguing that this closing was both constitutionally required and practically possible: required because a constitutional order that systematically fails its most economically vulnerable citizens has failed in its most fundamental constitutional purpose, and possible because the constitutional framework, properly interpreted and properly implemented through well-designed institutions, contains the tools necessary for a genuinely transformative constitutional economics. That argument, which was made against the political currents of his time with the intellectual courage that distinguished everything Mahmudul Islam wrote and argued, is the most important constitutional inheritance he has left to the Bangladesh of today.

The constitutional reform agenda of 2024-2026 is, in the deepest sense, an attempt to make that inheritance real. Whether it will succeed depends on factors that lie beyond the constitutional text itself, in the character of the institutions that will implement the reformed constitution, the commitment of the political actors who will govern under it, and the vigilance of the citizens whose rights it is designed to protect. But the analytical framework that Mahmudul Islam developed remains the indispensable guide for navigating the constitutional challenges ahead, and understanding that framework is the essential first step for anyone who aspires to contribute to Bangladesh's constitutional future.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART FOUR

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For the most recent constitutional developments, including the 2026 election results and the ongoing constitutional reform process, the reader should consult ConstitutionNet (constitutionnet.org/bangladesh), the Verfassungsblog, I-CONnect, and The Daily Star's constitutional affairs coverage.

End of Part Four. Part Five of this textbook will examine the constitutional framework for fundamental rights: the specific rights guaranteed in Part III of the Constitution, their doctrinal content, their judicial interpretation in the major cases decided by the Appellate Division and the High Court Division, the controversies about their scope and limits, and the implications of the proposed constitutional reforms for the rights framework. Mahmudul Islam's systematic treatment of each of the fundamental rights will be the analytical foundation for this examination, which will engage with the most recent jurisprudential developments in Bangladesh's courts and with the comparative constitutional law of fundamental rights in related jurisdictions.

PART FIVE

THE ARCHITECTURE OF FUNDAMENTAL RIGHTS: DOCTRINE, JURISPRUDENCE, PHILOSOPHY, AND THE STRUGGLE FOR CONSTITUTIONAL REALITY

A Preface to Part Five: Rights as Living Commitments

When Mahmudul Islam began practicing constitutional law in the late 1960s, the fundamental rights of Bangladesh's future constitution did not yet exist as legal text. They were aspirations, demands, the political vocabulary of a people insisting on recognition as a rights-bearing community rather than a colonial or provincial subject population. By the time he completed the third edition of his constitutional law book in 2012, those rights had accumulated four decades of judicial interpretation, legislative modification, executive subversion, constitutional amendment, and political contestation. They had been invoked by prisoners in the cells of military detention, by journalists threatened with prosecution for criticism of the government, by slum dwellers facing forced eviction, by environmental activists challenging industrial pollution, by workers

seeking compensation for industrial injuries, and by minority communities seeking equality before courts and state institutions. They had been honored, violated, suspended, restored, narrowed, and expanded.

Mahmudul Islam understood, with the depth of experience that only a career at the center of Bangladesh's constitutional practice could give, that the fundamental rights of the Constitution were not simply a list of provisions to be applied mechanically in court. They were, in his phrase, the "living sinews" of the constitutional order: the provisions that determined whether the constitutional project of guaranteeing dignity, equality, and freedom to every person within Bangladesh's territory was actually succeeding or failing. His treatment of the fundamental rights in his constitutional law book was consequently not merely a doctrinal survey. It was an ongoing critical assessment of the gap between the constitutional promise and the constitutional reality, an assessment that was simultaneously technically rigorous and morally serious in a way that made his analysis of these provisions among the most lasting and most important contributions to Bangladesh's constitutional literature.

This fifth part of the textbook provides a systematic and analytically deep examination of the fundamental rights guaranteed in Part III of the Constitution, organized around the major categories of rights and the most significant jurisprudential, philosophical, historical, and political questions they raise. It draws on Mahmudul Islam's constitutional framework as its primary analytical foundation, places his analysis in the context of the most recent developments in Bangladesh's constitutional jurisprudence and in global comparative constitutional law, and addresses the implications of the 2024-2026 constitutional reform agenda for the fundamental rights framework. The chapters that follow cover the rights to equality and non-discrimination; the rights to life, liberty, and security of person; the rights to freedom of expression, assembly, and association; the right to religion and the constitutional treatment of religious pluralism; and the structure of constitutional remedies under Article 102 and Article 44. Each chapter examines not only the doctrinal content of the relevant rights but the philosophical foundations that give them their constitutional significance, the historical and political pressures that have shaped their interpretation, and the controversies that continue to challenge their effective implementation.

CHAPTER SEVENTEEN: EQUALITY, NON-DISCRIMINATION, AND THE PROMISE OF SUBSTANTIVE JUSTICE

17.1 The Constitutional Architecture of Equality: Articles 27, 28, 29, and the Vision of the Equal Republic

The equality provisions of the 1972 Constitution are among its most philosophically ambitious and most practically contested. They do not merely require the state to treat all persons with formal procedural evenhandedness. They aspire to something more demanding: the creation of a society in which the hierarchies of caste, class, religion, sex, and ethnicity that had structured Bengali society for centuries are constitutionally dismantled in favor of a genuinely egalitarian political order. Understanding the depth of this aspiration, and the magnitude of the gap between it and the social realities of Bangladesh, is essential to understanding why the equality provisions have been among the most litigated, most debated, and most politically significant provisions in the entire constitutional text.

Article 27 establishes the foundational principle: "All citizens are equal before law and are entitled to equal protection of law." This provision encapsulates two distinct, related but not identical, constitutional commands. Equality before the law, in its classical liberal formulation derived from Dicey's concept of the rule of law, means that no person is above the law, that the same law applies to all persons regardless of their rank or status, and that the courts are the common arbiters of legal disputes regardless of the identity of the parties. Equal protection of the law, a concept drawn from the Fourteenth Amendment to the United States Constitution and from the post-war human rights tradition, means that the state may not classify persons or groups in ways that impose arbitrary disadvantages or reflect invidious distinctions, and that where classifications are made, they must be rationally connected to legitimate governmental purposes.

Mahmudul Islam's treatment of Article 27 in his constitutional law book distinguishes these two dimensions with analytical precision. He noted that the equality-before-the-law dimension had a relatively clear doctrinal content derived from the Diceyan tradition: it required that the executive act within the law, that no person be above the law, and that the courts be available to all on equal terms. The equal-protection dimension was, in his view, considerably more complex, because it raised the fundamental question of what constitutes an impermissible classification and what constitutes a permissible one. The Constitution does not require that all persons be treated identically in all circumstances. Such a requirement would be absurd: it would prevent the state from having different rules for children and adults, for the sick and the healthy, for professional practitioners and laypeople. What it does require is that distinctions among persons in the application of the law be based on relevant differences rather than arbitrary or invidious ones, and that they serve legitimate governmental purposes rather than the interests of powerful groups at the expense of vulnerable ones.

This distinction between permissible and impermissible legal classifications is easy to state in the abstract but frequently difficult to apply in specific cases. Mahmudul Islam's analysis of the relevant case law from Bangladesh's courts, as well as from India and other comparative jurisdictions, identifies a series of judicial tests for determining which side of the line a particular classification falls on. The "reasonable classification" test, which has been the dominant approach in both the Indian and Bangladeshi constitutional traditions, holds that a law does not violate the equal protection clause if it makes a classification that is (i) intelligible, meaning that there is a clear principle distinguishing those within the class from those outside it, and (ii) rationally related to the purpose of the legislation, meaning that the distinction between the classified groups bears a rational connection to the legislative objective being pursued.

The reasonable classification test is, as Mahmudul Islam recognized, a relatively permissive standard of constitutional review. It permits the legislature considerable latitude in classifying persons and groups for different legal treatment, as long as some rational basis for the classification can be identified. In its weakest form, the test requires only that a court be able to imagine some conceivable rational basis for the classification, regardless of whether the legislature actually had that basis in mind when it enacted the law. This weak-form rational basis review has been criticized, with some force, for being so deferential to legislative choice that it fails to provide meaningful constitutional protection against discriminatory legislation.

Bangladesh's courts have, on some occasions, applied a more demanding version of the reasonable classification test, particularly in cases where the classification appears to disadvantage historically marginalized groups or to be motivated by discriminatory purpose rather than by legitimate policy considerations. These more demanding applications of the test reflect the influence of the substantive equality concept, which holds that formal legal equality is insufficient when the social context in which laws operate is one of deep and historically rooted inequality, and that genuine equality sometimes requires differential treatment that takes account of the different circumstances in which different groups find themselves.

Mahmudul Islam's engagement with the substantive equality concept reflects one of the most philosophically sophisticated dimensions of his constitutional thought. He was deeply familiar with the feminist legal theory and critical race theory debates about the limits of formal equality that had developed primarily in the United States and Canada during the 1970s and 1980s, and he brought the insights of those debates to his analysis of Bangladesh's constitutional equality provisions. He argued that the equal protection clause of Article 27, properly understood, required the courts to look beyond the formal neutrality of legislative classifications to ask whether their practical effect was to maintain or reinforce the patterns of disadvantage that the constitutional commitment to equality was designed to overcome.

17.2 The Non-Discrimination Clause: Article 28 and the Categories of Prohibited Discrimination

Article 28 of the Constitution provides that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. It also provides, in Article 28(2), that women shall have equal rights with men in all spheres of state and public life. And it provides, in Article 28(3), that no citizen shall be subjected to any disability, liability, restriction, or condition with regard to access to public places on grounds only of religion, race, caste, sex, or place of birth.

The first thing to note about Article 28 is the word "only" in the prohibition on discrimination. The state is prohibited from discriminating on grounds of religion, race, caste, sex, or place of birth, but only where those are the sole ground for the differential treatment. Where the differential treatment is based on a combination of one of the prohibited grounds and some other relevant factor, the prohibition may not apply. This textual limitation on the scope of the non-discrimination clause was, as Mahmudul Islam noted, a significant constraint on the provision's reach, and it has been the source of considerable interpretive difficulty in the case law.

The judicial treatment of Article 28 has reflected this complexity. Bangladesh's courts have generally been willing to invalidate legislative and executive actions that are overtly discriminatory on grounds of religion, race, or sex, where the discriminatory intent is clear and the prohibited ground is the dominant or sole basis for the differential treatment. They have been less willing to use Article 28 to address structural or systemic discrimination, where the discriminatory effect arises from the cumulative operation of multiple factors rather than from a single clearly identifiable discriminatory policy choice. This limitation on the judicial enforcement of Article 28 has meant that some of the most pervasive and socially significant forms of discrimination in Bangladesh, including the systematic disadvantage of Hindu and other

religious minorities in access to land, employment, and educational opportunities; the discrimination against women in personal law governing inheritance, marriage, and divorce; and the marginalization of indigenous communities in national political and economic life, have not been fully addressed through constitutional litigation.

Mahmudul Islam's analysis of this gap between Article 28's promise and its judicial enforcement reflects his characteristic combination of doctrinal precision and normative concern. He noted that the limited judicial enforcement of Article 28 was, in part, a consequence of the structural design of the provision: the word "only" created an escape hatch for discriminatory practices that could be attributed to multiple grounds, and the provision's focus on "state" discrimination left a large domain of private discrimination beyond its direct reach. But he also argued that these structural limitations did not exhaust the constitutional significance of the non-discrimination principle. A court that was willing to engage seriously with the constitutional purpose of Article 28, which was to dismantle the hereditary hierarchies of religion, caste, and sex that had organized unequal social privilege in Bengal for centuries, would be able to develop a more robust and more effective non-discrimination jurisprudence than the case law had so far produced.

The Women's Affairs Reform Commission report of 2025, submitted to Chief Adviser Muhammad Yunus, addressed the limitations of Article 28 directly. The commission's 433 recommendations included, prominently, a call for the elimination of all discriminatory constitutional provisions and for the adoption of a uniform family code that would replace the existing system of religious personal laws, which continued to discriminate against women in matters of marriage, divorce, inheritance, and maintenance. The commission specifically identified the constitutional limitation of Article 28's non-discrimination guarantee to the "state and public domain" as a structural inadequacy, noting that the constitutional guarantee of equality for women in Article 28(2) was systematically undermined by the continuing operation of discriminatory personal laws that governed the most intimate and economically consequential aspects of women's lives.

This recommendation strikes at one of the deepest tensions in Bangladesh's constitutional framework: the tension between the universal equality principle of the modern constitutional state and the particularist personal law systems rooted in religious tradition that regulate family life for most of the population. Mahmudul Islam was acutely aware of this tension. He discussed it in the context of his analysis of Article 28 and of Article 41 (freedom of religion), noting that the constitutional protection of religious freedom created at least a *prima facie* constitutional argument against the forced replacement of religious personal laws with a secular uniform family code. At the same time, he argued that a constitutional framework genuinely committed to gender equality could not indefinitely tolerate a personal law system that systematically deprived women of equal rights in the domain of family life, and that some constitutional mechanism for reconciling the equality principle with the religious freedom principle was necessary.

The comparative constitutional experience of this tension, as Mahmudul Islam drew on in his analysis, is mixed. India has not enacted a uniform civil code despite the explicit directive in Article 44 of its Constitution to do so, precisely because of the political sensitivity of reforming the personal laws of religious minorities. Turkey enacted a secular civil code in 1926, replacing

the Ottoman personal law system, as part of Ataturk's modernizing revolution, but this was a highly coercive process that did not reflect the voluntary consent of the affected communities. Several African countries have attempted hybrid approaches that preserve a degree of religious personal law autonomy while establishing constitutional floors of gender equality below which no personal law system may fall.

The constitutional reform discussions of 2024-2026 in Bangladesh have not yet produced a definitive resolution of this tension, but the Women's Affairs Reform Commission's recommendation for a uniform family code represents the most direct and most comprehensive constitutional challenge to the status quo. How this recommendation is received by the parliament elected in February 2026 and by the Constitution Reform Council that is expected to implement the July Charter's reform agenda will be one of the most significant constitutional tests of the new Bangladesh that the July 2024 uprising aspired to create.

17.3 The Affirmative Action Controversy: Article 29(3), Quotas, and the Constitutional Limits of Positive Discrimination

No aspect of Bangladesh's equality jurisprudence has been more politically explosive, more constitutionally contested, or more directly connected to the events that triggered the July 2024 uprising than the constitutional framework for affirmative action and the related question of public service quotas. Understanding this controversy requires careful attention both to the constitutional text and to the political and social history that has given the textual provisions their charged significance.

Article 29 of the Constitution guarantees equality of opportunity for all citizens in respect of employment or office in the service of the Republic, and prohibits discrimination in public employment on grounds of religion, race, caste, sex, or place of birth. Article 29(3), however, provides that nothing in Article 29 shall prevent the state from making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic, nor shall it prevent the state from giving preference to any person who is a member of a scheduled tribe, for the purpose of their adequate representation in the service of the Republic. These provisions establish the constitutional foundation for affirmative action programs in public employment.

The system of quotas in Bangladesh's civil service and public universities has a long and deeply contested history. The original quota system, established in the early years of Bangladesh's independence, was explicitly justified as a compensatory measure for the victims of the Liberation War and for historically disadvantaged groups including women, tribal communities, and residents of underdeveloped districts. The rationale was straightforward: groups that had been systematically excluded from opportunities or that had suffered particular disadvantages would be given preferential access to public positions as a constitutional remedy for those disadvantages, consistent with the substantive equality principle.

Over time, the quota system was expanded and modified in ways that generated increasing controversy. The quota reserved for descendants of freedom fighters, which had been justified as compensation for the sacrifices of those who had fought for independence, was extended by

successive Awami League governments to an increasingly broad category of beneficiaries, at its peak occupying 30 percent of all government positions. The total quota across all categories reached 56 percent of public service positions, meaning that only 44 percent of positions were allocated on the basis of open merit competition.

The constitutional validity of this expanded quota system became the central issue in the student protests that began in mid-2024 and culminated in the July uprising. Students argued that the quota system, particularly the freedom fighter descendants' quota, had been systematically abused to provide patronage employment to Awami League supporters at the expense of merit-based candidates who had performed better in competitive examinations. They argued that this constituted both a violation of the constitutional guarantee of equality of opportunity in Article 29(1) and a misuse of the affirmative action authority in Article 29(3), which was intended for the advancement of genuinely disadvantaged groups rather than for the perpetuation of political patronage.

The High Court Division issued a judgment in June 2024 that struck down the quota system as unconstitutional, holding that it violated the equality provisions of the Constitution. The Appellate Division subsequently stayed this order but also directed the government to reform the quota system. The government's initial response to the stay order further inflamed the protests, leading to the mass uprising of July and August 2024 that ended with Sheikh Hasina's resignation.

The constitutional analysis of the quota controversy is, as Mahmudul Islam's framework would predict, considerably more complex than the political discourse around it suggested. The affirmative action authority in Article 29(3) is a genuine and constitutionally significant provision, not a mere loophole to be closed. The historical disadvantages of women, tribal communities, and underdeveloped district residents are real, documented, and constitutionally relevant. A constitution committed to substantive equality cannot simply abolish all differential treatment in public employment and declare that formal merit competition satisfies the equality principle, because formal merit competition in a structurally unequal society systematically reproduces the advantages of those who start from more privileged positions.

But the abuse of the affirmative action authority for purposes that have nothing to do with addressing genuine historical disadvantage is constitutionally indefensible. A quota that reserves positions for the descendants of persons who made sacrifices for the nation in 1971, extended to a class so broadly defined that it effectively includes a large portion of the Awami League's political constituency, has departed so far from the constitutional purpose of Article 29(3) that it can no longer be justified as a legitimate exercise of that authority. The constitutional test for the validity of affirmative action measures, which requires that they be rationally connected to the goal of securing adequate representation for genuinely backward sections of citizens, was clearly not satisfied by the quota system in the form it had taken by 2024.

The Constitutional Reform Commission's proposals for reforming the quota system, and the subsequent political negotiations that produced the July Charter's provisions on this issue, reflect an attempt to navigate between the legitimate constitutional objectives of affirmative action and the abuse of those objectives for political patronage. The July Charter proposed significant

reductions in the overall quota allocation, with the reserved proportion to be limited to specific, genuinely disadvantaged categories and subject to regular review based on evidence of whether the groups for whom quotas are reserved have achieved adequate representation.

Mahmudul Islam's constitutional framework provides the analytical tools for evaluating these proposals. His analysis of Article 29(3) insisted both that the affirmative action authority was constitutionally real and that it was constitutionally constrained: constrained by the requirement that the measures adopted actually serve the purpose of securing adequate representation for genuinely backward sections of citizens, by the principle of proportionality requiring that the measures not impose disproportionate burdens on those excluded from the quotas, and by the principle of periodicity requiring that the measures be reviewed and, if the constitutional purpose has been achieved, terminated. A reformed quota system that satisfies these constraints is not merely politically defensible but constitutionally required. A quota system that violates them is constitutionally impermissible, regardless of the political convenience of maintaining it.

CHAPTER EIGHTEEN: THE RIGHT TO LIFE AND PERSONAL LIBERTY: THE MOST FUNDAMENTAL RIGHT AND ITS MOST SERIOUS VIOLATIONS

18.1 Article 32: Text, Context, and the Philosophical Foundations of the Right to Life

Of all the fundamental rights in Bangladesh's Constitution, none is more foundational, more philosophically significant, or more gravely and consistently violated than the right to life and personal liberty in Article 32. The provision is among the shortest in the entire constitutional text: "No person shall be deprived of life or personal liberty save in accordance with law." Its brevity belies its extraordinary constitutional importance. Every other right, every other constitutional guarantee, every other aspiration of the constitutional order depends on the right to life, because a person deprived of life cannot exercise any other right, and a person deprived of personal liberty without lawful justification is a person for whom the entire structure of constitutional protection has failed at its most basic level.

The philosophical foundation of the right to life is ancient and multiform. In the natural law tradition derived from Locke, the right to life is the most fundamental of the natural rights because it is the precondition for the exercise of all others: no person can validly consent to be governed by a political authority that claims the power to deprive them of life arbitrarily, and therefore the protection of life against arbitrary state power is the most basic obligation that political authority owes to those subject to it. In the Kantian deontological tradition, the right to life derives from the categorical imperative's requirement that persons always be treated as ends in themselves and never merely as means: killing a person as an instrument of state policy treats that person's life as having merely instrumental value, which is incompatible with the dignity that every rational being possesses as a matter of moral principle.

In the international human rights tradition, the right to life is enshrined in Article 3 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, and in virtually every subsequent international and regional human rights instrument. The jurisprudence of international human rights bodies interpreting these provisions has established that the right to life is not merely a right against deliberate killing by the state but

also imposes positive obligations on the state to protect persons from threats to their lives that the state has the capacity to prevent, including threats from private actors.

Mahmudul Islam's analysis of Article 32 drew on all of these philosophical and legal traditions. He noted that the provision's formulation, "save in accordance with law," raised an immediate and critical question about the relationship between the constitutional right and the ordinary legislation that might purport to authorize state action that deprives persons of life or liberty. If the right to life means only that the state may not deprive persons of life without some legal authorization, and if the legislature can provide any authorization it chooses, then the right to life is no more than a procedural requirement that death be administered through legal forms rather than a substantive constitutional protection against killing.

Mahmudul Islam was emphatic that this procedural interpretation of Article 32 was constitutionally wrong. Drawing on the Indian Supreme Court's pathbreaking interpretation of the equivalent provision (Article 21 of the Indian Constitution) in *Maneka Gandhi v. Union of India* (1978), he argued that the phrase "in accordance with law" in Article 32 did not merely require that any deprivation of life or liberty be authorized by legislation, but required that the law authorizing such deprivation itself satisfy constitutional standards of fairness, reasonableness, and due process. A law that authorized arbitrary killing or arbitrary detention was not a "law" for constitutional purposes, because it failed to satisfy the standards that the constitutional framework as a whole requires of valid law.

This substantive interpretation of Article 32 has been accepted by Bangladesh's courts in a series of significant decisions. The High Court Division has consistently held that administrative actions affecting life or liberty must comply not merely with the formal requirements of enabling legislation but with the substantive standards of fairness and reasonableness that the constitutional framework requires. It has read into Article 32 requirements of notice before adverse administrative action, opportunity to be heard, reasoned decision-making, and proportionality between the means used and the ends pursued. And it has, as discussed in Part Four of this textbook, read into Article 32 a range of substantive interests, including rights to a minimum standard of living, to a healthy environment, and to protection from preventable industrial hazards, that transform the right to life from a purely negative protection against state killing into a positive constitutional framework for the protection of human welfare.

18.2 Extrajudicial Killings, Enforced Disappearances, and the Most Grave Constitutional Failures

The history of Bangladesh is, tragically, a history in which the right to life in Article 32 has been violated on a massive and systematic scale. Extrajudicial killings, enforced disappearances, and deaths in custody are not marginal or isolated events in Bangladesh's recent past. They are patterns of state conduct that have persisted across multiple governments, under both civilian and military administrations, and that represent a constitutional failure so fundamental that no analysis of Bangladesh's rights framework can avoid confronting them directly.

Between 2009 and 2023, during the period of Awami League governance, Odhikar, Bangladesh's leading human rights documentation organization, documented 2,699 extrajudicial killings, 677

enforced disappearances, and 1,048 deaths in custody. These are documented cases, not estimates; the actual numbers are likely higher, given the documented tendency of state agents and complicit communities to conceal evidence of extrajudicial killings and disappearances. The Rapid Action Battalion (RAB), a paramilitary law enforcement force created in 2004, was consistently identified as the primary institutional perpetrator of extrajudicial killings, conducting "crossfire" operations in which suspects were killed during alleged exchange of gunfire with law enforcement in circumstances that credible investigation consistently showed to be fabricated. The United States government sanctioned RAB and six of its officers in December 2021, citing credible reports of extrajudicial killings, citing Article 3 of the Universal Declaration of Human Rights and international human rights law.

The constitutional analysis of extrajudicial killings, through the framework that Mahmudul Islam developed, is unambiguous. The deliberate killing of persons by state agents outside any lawful judicial process is the most straightforward and the most grave violation of Article 32 that is possible. There is no "in accordance with law" defense available for extrajudicial killings: they are, by definition, killings that occur outside the legal process that the constitutional guarantee of life requires. The state's responsibility for extrajudicial killings by its agents is direct and inescapable: under both domestic constitutional law and international human rights law, the state is responsible for the acts of its agents carried out in the performance of their official functions, and extrajudicial killings by law enforcement personnel are paradigmatic cases of state conduct for which the state bears full constitutional accountability.

The enforced disappearance phenomenon presents a constitutional analysis of equal gravity but somewhat different doctrinal character. An enforced disappearance, as defined in international human rights law, involves the detention of a person by state agents, followed by the state's denial of the detention and refusal to disclose the person's fate or whereabouts. The constitutional significance of enforced disappearance is twofold. First, it violates Article 32 directly, because it deprives persons of their personal liberty without any lawful process: the detention is illegal from the start, and the state's concealment of it prevents any judicial review. Second, it violates Article 33, which requires that every person who is arrested be informed of the grounds for arrest and be produced before a magistrate within 24 hours. Enforced disappearances violate these procedural guarantees in the most fundamental way possible, not merely failing to comply with them but actively evading them through concealment and denial.

Mahmudul Islam's constitutional framework for analyzing these violations drew on both the text of Articles 32 and 33 and on the concept of habeas corpus as the constitutional mechanism for vindicating the right to liberty. The writ of habeas corpus, available through Article 102 of the Constitution, requires the state to produce before a court any person who is claimed to be unlawfully detained, and to provide legal justification for the detention. The habeas corpus jurisdiction has been, throughout the history of common law constitutionalism, the most fundamental judicial protection against arbitrary detention by the state. Mahmudul Islam analyzed the scope and limits of the habeas corpus jurisdiction in detail in his book, noting its critical role in protecting personal liberty against illegal detention, and also noting the political and institutional constraints that had, on numerous occasions in Bangladesh's history, prevented the courts from exercising this jurisdiction effectively against state actors who had the practical power to ignore judicial orders.

The post-July 2024 constitutional transition brought the extrajudicial killings and enforced disappearances question to the center of Bangladesh's constitutional agenda. The interim government under Muhammad Yunus established a commission of inquiry to investigate enforced disappearances, with the mandate to identify victims, perpetrators, and institutional systems that enabled the disappearances. The constitutional reform agenda included proposals for establishing an independent commission to investigate and prosecute violations of fundamental rights by state agents, building on the model of truth and reconciliation commissions in other post-authoritarian transitions.

Human Rights Watch's 2025 report on Bangladesh noted, however, that while the interim government had made some progress in reducing the frequency of extrajudicial killings and had taken some steps toward accountability for past abuses, progress was limited by the continued operation of the institutional structures, particularly RAB and other special security forces, that had been the primary instruments of rights violations under the Hasina government. The constitutional reform agenda's proposals for police reform, demilitarization of law enforcement, and strengthened civilian oversight of security forces address some of the institutional causes of extrajudicial violence, but their effective implementation requires a sustained political will that has not yet been fully demonstrated.

18.3 Preventive Detention: The Special Powers Act, Constitutional Standards, and the Abuse of Emergency Powers

One of the most persistently controversial aspects of Bangladesh's fundamental rights framework has been the system of preventive detention, under which persons may be detained without charge or trial on the basis of executive determinations that their detention is necessary to prevent prejudicial activity affecting the security of the state. The primary legislative instrument for preventive detention in Bangladesh is the Special Powers Act of 1974, which has been continuously in force since its enactment and has been the basis for thousands of detentions across the political spectrum throughout Bangladesh's history.

Mahmudul Islam's treatment of the Special Powers Act and the constitutional framework of preventive detention in his book is one of the most technically demanding and constitutionally significant sections of the entire work. He began with the constitutional provisions: Article 33 provides procedural safeguards against arrest and detention, but Article 33(2) explicitly states that nothing in the Article shall apply to any person who is arrested or detained under any law providing for preventive detention. The constitutional authorization for preventive detention is thus explicit in the text itself, acknowledging that there may be circumstances in which the state needs to detain persons without the full procedural protections of the criminal process in order to prevent serious threats to public order or national security.

The constitutional challenge of preventive detention is to ensure that this acknowledged necessity does not become a constitutional blank check for the executive to detain political opponents, social activists, journalists, or others whom those in power find inconvenient or threatening. The history of the Special Powers Act in Bangladesh is largely a history of precisely this abuse: academic studies and human rights documentation consistently show that the Act has been primarily used not against genuine threats to national security but against political

opponents, trade unionists, journalists, and ordinary citizens whose only "prejudicial activity" was the expression of views or the exercise of rights that those in power found threatening.

Mahmudul Islam's constitutional analysis of the limits on preventive detention drew on both the text of Article 33 and on the broader principles of constitutional interpretation that he consistently applied throughout his book. He argued that even though Article 33 explicitly excluded preventive detention from the procedural safeguards it established, this exclusion did not mean that preventive detention was beyond all constitutional scrutiny. The detaining authority must still comply with the specific procedural requirements for preventive detention set out in the Special Powers Act itself and in Article 33(5), which provides that no person shall be detained for a period exceeding six months without the order of an Advisory Board. And more fundamentally, the executive's determination that a particular person's detention is necessary to prevent prejudicial activity must itself be subject to judicial review for rationality and good faith: a detention order that is merely the exercise of political vendetta dressed in the language of national security is not a lawful exercise of the preventive detention power regardless of its formal compliance with statutory requirements.

The High Court Division has, on numerous occasions, used its writ jurisdiction under Article 102 to review preventive detention orders and to release detainees whose detention was found to be lacking in sufficient factual foundation or motivated by impermissible considerations. But the effectiveness of this judicial review has been significantly constrained by the deference that courts have tended to show to executive determinations of national security necessity, by the limited access to information that courts have had about the factual basis for detention orders, and by the political pressures that have, in periods of authoritarian governance, discouraged judges from issuing orders that the executive was likely to ignore or circumvent.

The constitutional reform agenda of 2024-2026 has included proposals to repeal the Special Powers Act, which human rights organizations and constitutional reform advocates have identified as one of the most consistently abused instruments of political repression in Bangladesh's legislative arsenal. The interim government's commitment to this reform has been partly fulfilled through the non-enforcement of the Act since August 2024, and through the release of political detainees held under its provisions. But the formal legal repeal of the Act, and its replacement with a narrowly drawn and procedurally constrained emergency detention law that genuinely satisfies constitutional standards, remains one of the most important unfinished items in the constitutional reform agenda.

18.4 The Right to a Fair Trial: Article 35 and the Constitutional Requirements of Criminal Justice

The constitutional requirements of a fair trial, distributed across Articles 35, 33, and the broader guarantee of protection of law in Article 31, represent one of the most technically sophisticated and jurisprudentially rich dimensions of Bangladesh's fundamental rights framework. Mahmudul Islam's treatment of these provisions is among the most careful and most practically significant in his book, reflecting his deep familiarity with criminal procedure from his career as an advocate in criminal and constitutional matters.

Article 35 of the Constitution establishes a series of procedural protections for persons accused of criminal offences, including the protection against trial for any act that was not an offence when committed (non-retroactivity of criminal law), the protection against double jeopardy (no person shall be prosecuted and punished for the same offence more than once), and the protection against self-incrimination (no person accused of an offence shall be compelled to be a witness against himself). These protections, drawn directly from the common law tradition of criminal justice, represent the constitutional codification of the principle that the state's power to prosecute and punish must be exercised within constraints that respect the dignity and procedural rights of the accused.

Mahmudul Islam was particularly attentive to the non-retroactivity principle in Article 35(1), which he analyzed as both a substantive and a procedural constitutional requirement. The substantive dimension of the non-retroactivity principle, that the state may not punish conduct that was lawful when it was done, reflects the rule of law principle that persons must be able to order their conduct in reliance on the existing law, without fear that subsequent legislative changes will expose them to criminal liability for past actions. The procedural dimension requires that the definition of criminal offences be clear and publicly known at the time when conduct is governed by them, so that persons have a meaningful opportunity to comply with the law's requirements.

The non-retroactivity principle has been particularly significant in the context of Bangladesh's transitional justice proceedings following the July 2024 uprising. The prosecution of former officials of the Hasina government for their roles in extrajudicial killings, enforced disappearances, and other human rights violations has raised complex constitutional questions about the application of criminal law to conduct that occurred in the past, about the constitutional validity of tribunals established specifically to adjudicate transitional justice claims, and about the relationship between transitional justice objectives and the constitutional requirements of fair trial.

Mahmudul Islam's constitutional framework, applied to these transitional justice questions, yields a series of analytically important observations. First, the prosecution of past human rights violations under criminal law that was in force at the time of the violations does not raise non-retroactivity concerns, even if the political will to prosecute those violations was absent at the time they occurred. The criminal law prohibiting murder, torture, and arbitrary detention has been in force throughout Bangladesh's history; the impunity that perpetrators enjoyed was a product of political protection rather than legal absence. Second, the establishment of special tribunals to adjudicate these prosecutions does not, in itself, violate the constitutional right to a fair trial, provided that those tribunals provide the full range of procedural protections that the Constitution requires. Third, the pressure to obtain convictions for transitional justice purposes must be resisted if it threatens to compromise the procedural requirements of Articles 35 and 31: a justice process that violates the rights of the accused in order to achieve accountability for past violations of rights is a self-defeating constitutional enterprise that substitutes new injustices for old ones.

CHAPTER NINETEEN: FREEDOM OF EXPRESSION, PRESS FREEDOM, AND THE CONSTITUTIONAL LIMITS OF SPEECH REGULATION

19.1 Article 39: The Constitutional Framework for Freedom of Expression

The freedom of expression protected by Article 39 of Bangladesh's Constitution is the right that has been most consistently and most systematically violated by successive governments throughout the country's history, and whose violation was most directly connected to the events of the July 2024 uprising. Understanding Article 39, its scope, its limits, its history of violation, and the constitutional reform efforts to strengthen it is therefore essential to understanding both the constitutional jurisprudence of fundamental rights in Bangladesh and the political dynamics that have shaped the constitutional order.

Article 39 establishes, subject to the reasonable restrictions specified in Article 39(2), the freedom of thought and conscience, and the right of every citizen to freedom of speech and expression and of the press. The "reasonable restrictions" clause in Article 39(2) permits Parliament to impose restrictions by law on the exercise of these rights in the interests of the security of the state, friendly relations with foreign states, public order, decency or morality, in relation to contempt of court, defamation, or incitement to an offence. This list of permissible grounds for restriction is broad enough that it has, in practice, provided legislative authority for a very wide range of restrictions on speech and press freedom, many of which have been constitutionally dubious in their design and clearly abusive in their application.

Mahmudul Islam's constitutional analysis of Article 39 drew on the fundamental distinction between the broad text of the rights guarantee, which encompasses all speech and expression regardless of content, and the narrow grounds on which Parliament may restrict that guarantee, which must be interpreted strictly because they are exceptions to a constitutional right rather than independent legislative authorities. He argued that the constitutional standard of "reasonable restrictions" required courts to scrutinize speech-restricting legislation with particular care, to ensure both that the restrictions were authorized by one of the specific grounds listed in Article 39(2) and that the restrictions were proportionate to the legitimate purpose they served, not going beyond what was strictly necessary to achieve that purpose.

This proportionality requirement has significant implications for the kind of speech restriction legislation that Bangladesh has actually enacted. The Digital Security Act of 2018, its successor the Cyber Security Act of 2023, and the Cyber Protection Ordinance of 2025, the three overlapping legislative frameworks for regulating speech in digital and online environments that have been at the center of Bangladesh's most serious free speech controversies, each claimed to fall within the "security of the state" or "public order" exceptions in Article 39(2). Their constitutional validity, through the lens of Mahmudul Islam's proportionality-based interpretation of Article 39, is deeply questionable.

The Digital Security Act of 2018 was, as documented by Amnesty International, Article 19, and numerous other human rights organizations, a fundamentally disproportionate restriction on freedom of expression. Its broad and vaguely worded provisions criminalized a wide range of speech that had no plausible relationship to the security of the state or to public order in any constitutionally legitimate sense. Section 21, which criminalized content that was "offensive" or "false" with respect to the Liberation War, Sheikh Mujibur Rahman, the national anthem, or the national flag, was a direct restriction on political speech of the kind that is most centrally within

the protective scope of Article 39's guarantee. Section 25, which criminalized the publication of information that was "offensive" or "fear-inducing," was so vague and overbroad as to be constitutionally incapable of satisfying the clarity requirement that the rule of law imposes on criminal statutes. Section 31, which criminalized "propaganda" against the liberation war, was an attempt to place a particular historical narrative beyond constitutional criticism, in direct violation of the freedom of thought and conscience that Article 39 explicitly protects.

The Cyber Security Act of 2023, despite being presented by the Hasina government as a liberalizing reform of the Digital Security Act, retained virtually all of the most constitutionally problematic provisions of its predecessor, in some cases merely renumbering them. The continuation of criminal liability for "offensive" speech about the Liberation War and national symbols, the broad surveillance powers, the non-bailable nature of many offences, and the practical use of the Act to prosecute journalists, opposition politicians, and ordinary citizens for social media posts criticizing the government, all demonstrated that the constitutional deficiency of the earlier Act had been carried over rather than corrected.

The interim government's repeal of the Cyber Security Act in May 2025 and its replacement with the Cyber Protection Ordinance represented a meaningful, if incomplete, constitutional improvement. The removal of nine of the most constitutionally problematic provisions, including the criminalization of criticism of Liberation War history and national symbols, the introduction of judicial oversight for content removal orders, and the recognition of AI-related cybercrime as a new category of genuine criminal threat, all brought the legal framework into closer alignment with the constitutional requirements of Article 39. But the retention of criminal penalties for online speech, the continued broad powers of content removal, and the concerns about surveillance authority identified by civil society organizations, means that the Cyber Protection Ordinance does not fully satisfy the constitutional standard of proportionate restriction that Mahmudul Islam's analysis of Article 39 requires.

The constitutional standard against which all of these legislative frameworks should be measured is, in Mahmudul Islam's formulation, the principle that the state may restrict speech only where the restriction is necessary in a democratic society to protect against genuine and serious threats to the specifically identified constitutional interests (security, public order, decency, and so on), and only to the minimum degree necessary to achieve that protection. This is the standard applied by international human rights bodies, including the UN Human Rights Committee in its General Comment 34 on Article 19 of the ICCPR, which specifically addresses the relationship between freedom of expression and the legitimate grounds for its restriction. It is also the standard that follows from the basic constitutional logic of a rights guarantee: if the exception swallows the rule, the guarantee means nothing.

19.2 Press Freedom and the Constitutional Position of the Media

The constitutional protection of press freedom in Article 39 has a specific significance in Bangladesh's constitutional history that goes beyond the general freedom of expression. A free press is not merely one aspect of individual liberty among others. It is, as the democratic theory of constitutionalism consistently emphasizes, a structural requirement of democratic government itself. Without a press that can investigate, criticize, and hold accountable those who exercise

public power, the democratic accountability mechanisms on which constitutional government depends cannot function. An unfree press is not merely an infringement of individual journalists' rights; it is a structural injury to the constitutional order as a whole.

Mahmudul Islam's treatment of press freedom in his constitutional law book reflected his understanding of the structural constitutional significance of a free press. He noted that Article 39's guarantee of freedom of the press was not a concession to the media industry but a constitutional recognition that independent journalism was a necessary condition for democratic self-governance. He argued, consistently with the international human rights framework, that restrictions on press freedom should be assessed with particular stringency precisely because of the institutional importance of the press to the functioning of the constitutional order: a government that restricts the press in ways that prevent effective reporting on its own conduct is a government that is undermining the very constitutional accountability mechanisms on which its own legitimacy depends.

The history of press freedom in Bangladesh is a history of systematic government attempts to control or suppress independent journalism, interspersed with periods of relative freedom when political conditions permitted a more critical press. The Hasina government's use of the Digital Security Act and its predecessors to prosecute journalists who reported critically on government policies, political violence, or corruption was documented by multiple international organizations including Reporters Without Borders, the Committee to Protect Journalists, and Freedom House, all of which consistently ranked Bangladesh among the worst countries in the world for press freedom in the final years of Hasina's government.

The most constitutionally significant aspect of this history, from Mahmudul Islam's perspective, was not the individual prosecutions of journalists, serious as those were, but the chilling effect that the mere existence of broad and vaguely worded criminal speech laws had on independent journalism as a whole. When journalists know that reporting on sensitive topics, publishing critical commentary about powerful figures, or sharing information that embarrasses the government may result in prosecution under laws that carry substantial prison sentences and whose terms are vague enough to be applied to almost any critical speech, the result is a systematic self-censorship that is as damaging to press freedom as direct censorship, and considerably harder to challenge in court because it operates through private calculation rather than direct state action.

The constitutional reform agenda of 2024-2026 has addressed press freedom through several complementary mechanisms: the reform of the criminal speech laws, as discussed above; the proposal for a constitutional provision explicitly protecting journalistic sources; and the reform of media ownership and regulation laws to prevent the concentration of media ownership in the hands of persons with close ties to the governing party that had occurred under the Hasina government. Whether these reforms will be effectively implemented, and whether the political culture of media regulation in Bangladesh can be shifted toward genuine respect for press independence, remains to be seen.

19.3 The Internet, Digital Rights, and the Emerging Constitutional Framework for Online Expression

The constitutional framework for freedom of expression developed by Mahmudul Islam in his analysis of Article 39 was developed primarily in the context of traditional media: print journalism, broadcast radio and television, and public speech and assembly. The rise of the internet and social media as the dominant platforms for public communication in Bangladesh, which accelerated dramatically in the second decade of the twenty-first century, has created new constitutional questions that Mahmudul Islam's framework can illuminate but did not directly address.

The constitutional status of online expression in Bangladesh has been one of the most actively contested legal questions of the past decade. The successive legislative frameworks from Section 57 of the ICT Act through the Digital Security Act to the Cyber Security Act and most recently the Cyber Protection Ordinance represent a series of attempts by successive governments to establish legal control over online speech, each one contested by civil society as constitutionally incompatible with Article 39's guarantee of freedom of expression and each one generating a new cycle of litigation, advocacy, international pressure, and eventual (partial and reluctant) reform.

The constitutional analysis of internet speech regulation, applied through Mahmudul Islam's framework, follows the same fundamental principles as the analysis of traditional speech regulation, with certain modifications required by the specific characteristics of digital communication. The fundamental principle is the same: restrictions on online speech must be authorized by one of the specific grounds listed in Article 39(2), must be rationally necessary to protect the interest being claimed, and must be proportionate to the legitimate purpose being served. The modifications required by digital communication reflect its specific characteristics: its speed, its global reach, its permanence, its searchability, and its capacity to amplify both valuable speech and harmful content at a scale and speed that traditional media could never achieve.

Several specific constitutional issues about online expression deserve attention in light of the 2025 legislative developments. The first is the question of internet shutdowns, which the Hasina government imposed repeatedly, most dramatically for 11 days during the July 2024 uprising, as a means of suppressing the communication that allowed protest to be organized and documented. Mahmudul Islam's constitutional framework, applied to internet shutdowns, yields a clear conclusion: a blanket internet shutdown is an extraordinarily broad restriction on freedom of expression that cannot satisfy the proportionality requirement, because it prevents not merely the specific harmful speech that might justify targeted restriction but all communication on the internet, the vast majority of which is constitutionally protected. The interim government's commitment to ending internet shutdowns, expressed through the BTRC chairman's public statement that the internet would not be shut down again without proper legal authorization and judicial oversight, represents a meaningful step toward constitutional compliance with Article 39, though its durability will depend on whether the political pressures that generated the shutdowns in the first place have been genuinely eliminated.

The second issue is the constitutional status of artificial intelligence-generated content, which the Cyber Protection Ordinance of 2025 addressed by being the first South Asian legal instrument to explicitly reference AI-related cybercrime, including deepfakes and AI-generated disinformation.

The constitutional analysis of AI-generated speech is among the most genuinely novel questions in the emerging field of digital constitutional law, and it requires careful attention to the specific ways in which AI-generated content challenges existing constitutional frameworks. Deepfakes, which create realistic-appearing videos or audio recordings of persons saying or doing things they never said or did, pose a direct threat to the constitutional right of individuals to control their own identity and representation, and they can cause serious harm to individuals' reputations and to the integrity of democratic processes by creating false impressions about what political leaders have said or done. The constitutional framework for regulating such content, consistent with Article 39's guarantee of freedom of expression, requires careful attention to the distinction between the genuine harms that AI-generated disinformation can cause and the risk that broadly worded regulations will be used to restrict legitimate speech that governments find inconvenient.

19.4 Freedom of Assembly and Association: Articles 37 and 38 in the Context of Political Protest

The freedoms of assembly and association protected by Articles 37 and 38 of the Constitution are, alongside freedom of expression, the constitutional rights most directly connected to the events of the July 2024 uprising. The student-led protests that brought down the Hasina government were an exercise of precisely the rights that these provisions guarantee: the right to peacefully assemble, to form associations for the pursuit of shared objectives, and to participate in public political life through organized collective action. The government's response to those protests, which involved the systematic use of lethal force against unarmed demonstrators and the mass arrest of student leaders, was a fundamental violation of Articles 37 and 38 that cost more than a thousand lives.

Mahmudul Islam's constitutional analysis of Articles 37 and 38 drew on the fundamental democratic theory of freedom of assembly and association: that these freedoms are not merely individual liberties but structural prerequisites for democratic self-governance. A democracy in which citizens cannot peacefully assemble to express their views or to organize political action is not a functioning democracy in any substantive sense; it is, at most, a democracy of voting without the capacity for the organized political contestation that gives voting its meaning. The constitutional protection of assembly and association therefore serves not merely individual interests but the interests of the democratic constitutional order as a whole.

The "reasonable restrictions" to which Articles 37 and 38 are subject, including restrictions in the interests of public order and morality, have been the basis for a series of executive and legislative actions that Mahmudul Islam analyzed with characteristically critical attention. He noted that the concept of "public order" is inherently malleable and susceptible to abuse: governments that find peaceful protest inconvenient can almost always construct a plausible public order justification for restricting it, whether by citing the possibility of violence from counter-demonstrators, the disruption to traffic or economic activity, or the threat of social unrest. The constitutional test for the validity of such restrictions, as he argued, required courts to look beyond the stated justification to ask whether the restriction was genuinely necessary for public order purposes or whether it was a pretext for the suppression of legitimate political opposition.

The systematic use of police and paramilitary forces to suppress the quota reform protests of July 2024, including the deployment of live ammunition against unarmed crowds of students, cannot be characterized as a "reasonable restriction" in the interest of public order under any constitutionally plausible interpretation. It was a fundamental violation of Articles 37 and 38, compounded by the violations of Article 32 (right to life) that resulted from the killing of over a thousand protesters. The constitutional accountability for these violations remains one of the most pressing unfinished items on Bangladesh's transitional justice agenda.

CHAPTER TWENTY: THE RIGHT TO RELIGION AND CONSTITUTIONAL SECULARISM: A JURISPRUDENTIAL EXPLORATION

20.1 Article 41 and the Complexity of Religious Freedom in a Multi-Religious Society

The constitutional protection of religious freedom in Article 41, and the related question of the constitutional status of secularism after the eighth amendment's declaration of Islam as the state religion, represents one of the most philosophically complex and most politically sensitive domains of Bangladesh's fundamental rights framework. Mahmudul Islam's treatment of these issues in his constitutional law book reflects the full depth of his constitutional scholarship: he engaged with the philosophical foundations of religious liberty, with the comparative constitutional experience of secular and semi-secular states, with the specific doctrinal history of Bangladesh's constitutional treatment of religion, and with the practical consequences of the state religion declaration for the constitutional status of religious minorities.

Article 41 provides that, subject to law, public order, and morality, (a) every citizen has the right to profess, practice, or propagate any religion, and (b) every religious community or denomination has the right to establish, maintain, and manage its religious institutions. Article 41(2) provides that no person attending any educational institution shall be required to receive religious instruction relating to a religion other than his own.

The philosophical foundation of Article 41's guarantee of religious liberty is the liberal principle of freedom of conscience: the conviction that the most intimate convictions of a person, including their beliefs about the ultimate questions of existence, meaning, and morality, are beyond the legitimate authority of the state to direct or coerce. This liberal conception of religious freedom protects not merely the private sphere of religious belief and worship but the public expression and practice of religion, the organization of religious communities, and the institutional life of those communities through religious schools, places of worship, charitable organizations, and other institutions.

The tension between this liberal guarantee of religious liberty and the eighth amendment's declaration of Islam as the state religion is one of the most significant constitutional contradictions in Bangladesh's constitutional framework. Mahmudul Islam's analysis of this tension was careful and measured, reflecting both the genuine constitutional complexity of the issue and the political sensitivity of the state religion question in a country that is predominantly Muslim. He noted that the declaration of a state religion did not necessarily constitute a violation of Article 41's guarantee of religious liberty, provided that the state religion declaration was understood as having only a symbolic or ceremonial significance rather than as authorizing

discrimination against members of other religions. But he also noted that the historical and political context in which the state religion declaration had been made, as part of General Ershad's attempt to consolidate political support through religious symbolism during a period of military rule, and the practical effects of the declaration on the treatment of religious minorities, created serious constitutional concerns that went beyond the formal question of whether the declaration was technically compatible with Article 41.

The empirical record of the treatment of religious minorities in Bangladesh, as Mahmudul Islam was well aware, has been deeply troubling. Hindus, who constituted approximately 28 percent of the population at the time of Bangladesh's independence but now constitute approximately 8 to 9 percent due to decades of emigration, have been subject to systematic discrimination in land rights, public employment, and access to justice, as well as periodic episodes of communal violence that have left their communities diminished and fearful. The constitutional guarantee of equal protection for all citizens in Article 27 and the prohibition on religious discrimination in Article 28 have not been effectively enforced to prevent this systematic disadvantage.

The Constitutional Reform Commission's recommendation to remove the state religion clause from the Constitution, restoring the secularism that was one of the original four fundamental principles of the 1972 Constitution, was among the most contested proposals in the reform agenda. The July Charter ultimately did not include a formal restoration of secularism, in part because of resistance from conservative Islamic political parties and in part because of a judgment by the negotiating parties that the state religion question was too politically explosive to risk in the context of a broader constitutional reform agenda. The compromise language adopted in the July Charter, which recognized Bangladesh as a pluralistic, multi-religious country committed to the dignity of all communities, represents an attempt to provide constitutional protection for religious pluralism without directly confronting the state religion question.

Mahmudul Islam's constitutional framework, applied to this compromise, would likely assess it as an important but insufficient step toward constitutional consistency. The recognition of religious pluralism in constitutional principles is valuable, but it does not resolve the structural contradiction between the state religion declaration and the equal protection guarantee. The structural contradiction remains, and its resolution requires, at minimum, a constitutional clarification that the state religion declaration has no implications for the equal constitutional status and equal treatment of all citizens regardless of religion.

20.2 Blasphemy, Religious Sentiments, and the Constitutional Limits of Offensive Speech

The protection of religious sentiments has been one of the most contested areas of speech regulation in Bangladesh, and the constitutional analysis of legislation designed to protect religious sentiments from offense raises some of the most difficult questions in the jurisprudence of Article 39 and Article 41.

The relevant legislative provisions have included Section 295A of the Penal Code (which has been in force since the colonial period and criminalizes deliberate acts intended to outrage religious feelings), Section 28 of the Digital Security Act (which criminalized online content that

hurt religious sentiments), and the equivalent provision in the Cyber Security Act. The constitutional analysis of these provisions requires attention to the tension between the freedom of expression in Article 39, which protects the right to express views that others find offensive or hurtful, and the interest in protecting religious communities from serious and deliberate attacks on their faith and practice.

Mahmudul Islam's analysis of this tension drew on the principle of proportionality and the distinction between legitimate restriction and illegitimate censorship. He acknowledged that the state had a legitimate constitutional interest in preventing speech that was specifically designed to incite communal violence or to degrade religious communities in ways that threatened their members' equal dignity and participation in public life. But he also argued, with characteristic intellectual honesty, that this legitimate interest was far narrower than the legislative provisions typically claimed. Speech that criticizes religious doctrines, questions religious claims, satirizes religious practices, or argues for secular alternatives to religious regulation of public life is constitutionally protected even if deeply offensive to members of religious communities, because the freedom of thought and expression that Article 39 guarantees must include the freedom to engage critically with the religious dimensions of life and culture.

The constitutional standard for legislation restricting speech on grounds of religious sentiment protection should, on Mahmudul Islam's framework, be limited to speech that is specifically designed to incite violence or discrimination against religious communities, not speech that merely offends religious sensibilities. This is consistent with the UN Human Rights Committee's General Comment 34, which explicitly states that prohibitions of blasphemy are incompatible with the ICCPR except in the narrow case of advocacy of religious hatred that constitutes incitement to discrimination, hostility, or violence. The arrest in February 2025 of poet and academic Sohel Hasan Galib for content in his poetry book that allegedly hurt religious sentiments, documented in human rights reporting, illustrates the continuing constitutional risk posed by broadly worded religious sentiment legislation that does not satisfy this narrow standard.

CHAPTER TWENTY-ONE: ARTICLE 102 AND THE CONSTITUTIONAL REMEDY: THE WRIT JURISDICTION AS THE GUARDIAN OF FUNDAMENTAL RIGHTS

21.1 The Architecture of Constitutional Remedies: Article 102 and Article 44

The constitutional machinery for the enforcement of fundamental rights, centered on Article 102's grant of writ jurisdiction to the High Court Division and Article 44's guarantee that every citizen may move the High Court Division for the enforcement of any of the fundamental rights conferred by Part III, is the institutional expression of the constitutional commitment that the rights in Part III are genuine rights rather than merely aspirational statements. Without a judicial forum with the power to issue binding orders enforcing fundamental rights against the state, the most eloquent and most ambitious bill of rights is no more than a statement of constitutional aspiration that those with state power are at liberty to ignore.

Mahmudul Islam devoted significant analytical attention to the writ jurisdiction of the High Court Division, recognizing it as one of the constitutional provisions of greatest practical

importance for the citizens whose rights the Constitution was supposed to protect. His analysis covered the five traditional writs that Article 102 makes available to the High Court Division: habeas corpus, mandamus, certiorari, prohibition, and quo warranto. He analyzed the conditions for the exercise of each writ, the standing requirements that determine who may apply for constitutional relief, the standard of judicial review applicable in different categories of cases, and the practical limitations on the effectiveness of the writ jurisdiction in Bangladesh's specific constitutional environment.

The most practically significant of the writs, as Mahmudul Islam's analysis consistently reflected, is habeas corpus: the writ that requires the state to produce before a court any person who is claimed to be unlawfully detained and to provide lawful justification for the detention. Habeas corpus is the constitutional mechanism for giving effect to the right to personal liberty in Article 32, and its availability is the clearest indicator of whether the constitutional guarantee of liberty is genuinely effective. A constitutional order in which habeas corpus applications are efficiently processed, in which courts are willing to order the release of unlawfully detained persons, and in which their orders are respected by executive authorities is a constitutional order in which personal liberty has genuine constitutional protection. A constitutional order in which habeas corpus applications are delayed, dismissed on procedural grounds, or ignored in practice by executive authorities that have the political power to defy judicial orders is a constitutional order in which personal liberty has only formal constitutional protection.

The history of habeas corpus in Bangladesh is, as with so much of Bangladesh's constitutional history, a history that combines moments of genuine constitutional courage with long periods of institutional failure and political constraint. There have been significant cases in which Bangladesh's courts have issued habeas corpus orders against military authorities, against intelligence agencies detaining persons without judicial authorization, and against government officials implementing policies of arbitrary detention. Some of these orders have been honored; others have been ignored, delayed, or technically complied with in ways that rendered them practically ineffective. The record is mixed, and the overall assessment of the habeas corpus remedy's effectiveness in protecting personal liberty in Bangladesh must be cautiously qualified.

Mahmudul Islam's analysis of the mandamus writ, by which a court can require a public authority to perform a public duty that the law imposes on it, has been particularly significant in the context of the writ's use to enforce positive constitutional obligations on the state. The expansion of the right to life in Article 32 to encompass rights to a healthy environment, to minimum welfare, and to protection from preventable industrial hazards, as discussed in Parts Four and Five of this textbook, depends on the availability of mandamus as a remedy for the state's failure to fulfill these positive obligations. Islam's analysis carefully delineated the conditions under which mandamus was available to enforce positive constitutional obligations, noting both the courts' willingness to use the writ in appropriate cases and the important constitutional constraints on using it to substitute judicial for legislative and executive judgment in matters of policy.

21.2 Public Interest Litigation and the Democratization of Constitutional Remedies

One of the most significant developments in the constitutional enforcement of fundamental rights in Bangladesh, directly relevant to Mahmudul Islam's analysis of Article 102 and the writ jurisdiction, has been the emergence and consolidation of public interest litigation (PIL) as a mechanism for bringing constitutional rights claims on behalf of groups and communities whose members lack the individual resources and organizational capacity to pursue constitutional litigation through normal channels.

Public interest litigation is a procedural innovation, pioneered in India in the late 1970s and early 1980s and adopted by Bangladesh's courts with increasing readiness from the 1990s onward, that relaxes the traditional standing requirements for constitutional litigation in cases where the rights at issue are those of vulnerable or marginalized communities. Under traditional standing rules, only the person whose own rights have been violated may bring a constitutional claim. Under PIL doctrine, a court may permit a public interest organization, an advocate, or even the court itself acting *suo motu* (on its own initiative) to bring a constitutional claim on behalf of persons who are unable to do so themselves, typically because they are imprisoned, are in conditions of severe economic hardship, or belong to communities that lack the organizational resources for conventional litigation.

Mahmudul Islam's treatment of PIL in his constitutional law book was measured and analytically careful. He recognized the potential of PIL to democratize access to constitutional remedies, allowing the constitutional rights of the poorest and most marginalized citizens to be vindicated in ways that traditional adversarial litigation could not achieve. He cited the significant PIL cases that had been decided by Bangladesh's courts, including the Mohiuddin Farooque case on environmental rights, the Ain O Salish Kendra case on the rights of slum dwellers against arbitrary eviction, and several significant cases on workers' rights and minimum wages, as examples of the PIL mechanism's constitutional potential.

But Islam was also alert to the risks and limitations of PIL as a constitutional mechanism. He noted that PIL could transform courts from adjudicators of individual disputes into something more like policy-making agencies, exercising continuing supervision over complex social and administrative programs in ways that raised serious questions about institutional competence and constitutional separation of powers. He noted the risk of PIL being used by organized and well-resourced advocacy groups to pursue policy agendas that might not always reflect the interests of the communities nominally being represented. And he noted the practical limitations of PIL orders in a constitutional environment where the state's capacity and political will to implement judicial directives was uncertain and frequently inadequate.

The Rana Plaza disaster and the subsequent PIL proceedings represent one of the most important examples of both the potential and the limitations of constitutional PIL in Bangladesh's specific context. The High Court Division's *suo motu* proceedings after the disaster, its issuance of mandatory directions to the government to establish building safety inspection systems and to ensure compensation for victims, and the long and still-incomplete process of implementing those directions illustrate both what PIL can achieve, bringing a major constitutional issue to judicial attention and establishing legal obligations that government would otherwise have avoided, and what it cannot achieve, ensuring that the legal obligations it establishes are fully

and faithfully implemented in a political and administrative environment that is not constitutionally well-prepared for the demands that effective rights enforcement places on it.

21.3 The Emergency Provisions and the Suspension of Fundamental Rights

A constitutional framework that guarantees fundamental rights against state action must also address the question of what happens to those rights in states of emergency, when the normal constraints of constitutional government may be insufficiently flexible to address genuine and serious threats to the state's survival. Bangladesh's Constitution addresses this question through the emergency provisions of Articles 141A, 141B, and 141C, which authorize the suspension of specified fundamental rights during periods of emergency declared by the President.

Mahmudul Islam's treatment of the emergency provisions in his constitutional law book reflects his characteristic combination of technical constitutional precision and normative concern. He noted that the emergency provisions represented a constitutionally necessary acknowledgment that there are circumstances in which the normal operation of constitutional government may need to be modified to address exceptional threats. A constitutional order that provided no mechanism for emergency response would be dangerously inflexible. But he also noted, with equal emphasis, that emergency powers represented the most serious threat to the constitutional order itself: once invoked, they could be used to suspend the very rights that the constitution was designed to protect, and they had been used in Bangladesh's history to justify some of the most serious violations of those rights.

The historical record of emergency declarations in Bangladesh is sobering. Every emergency declared since independence has been used not merely to address genuine security threats but to consolidate executive power, suppress political opposition, and prevent the accountability mechanisms of constitutional government from functioning. The Hasina government's effective creation of a permanent state of emergency through targeted repression of political opponents, even without formal constitutional emergency declarations, represents a modern variant of the same constitutional pathology: using the mechanisms of crisis governance, whether formally or informally, to insulate executive power from the constitutional constraints that the rights provisions impose.

The constitutional reform proposals of 2024-2026 have addressed the emergency provisions in several important ways. The July Charter's proposals for strengthened procedural requirements for emergency declarations, for limitations on the duration of emergency rule, and for parliamentary oversight of emergency powers represent attempts to constrain the executive's ability to use emergency authority for political rather than constitutional purposes. These proposals are directly consistent with Mahmudul Islam's analysis of the emergency provisions, which consistently emphasized that the constitutional authorization for emergency rule was not a blank check for executive governance but a carefully constrained exception to the normal requirements of constitutional government that must be interpreted and applied with extreme care.

CONCLUSION TO PART FIVE: FUNDAMENTAL RIGHTS AND THE CONSTITUTIONAL MEASURE OF BANGLADESH'S PROGRESS

The fundamental rights of Part III of Bangladesh's Constitution represent the most direct constitutional expression of the commitment to human dignity that animated the independence struggle of 1971 and the constitutional project that followed. They are the constitutional standards against which the performance of every government, every institution, and every constitutional actor in Bangladesh must ultimately be measured. And as this extended analysis has demonstrated, the history of Bangladesh's constitutional development since 1972 is, in large measure, a history of the systematic gap between those standards and the constitutional reality of life for most Bangladeshis.

Mahmudul Islam spent his career as a lawyer, a scholar, and an Attorney General insisting that this gap was both constitutionally unacceptable and practically remediable. His constitutional method, combining technical rigor with purposive interpretation, comparative breadth with specific doctrinal precision, and substantive constitutional commitment with institutional realism, provides the most important available framework for understanding both what the fundamental rights provisions require and what it would take to make them genuinely effective.

The events of July and August 2024, and the constitutional reform agenda they have generated, represent the most serious attempt in Bangladesh's history to close the gap between constitutional promise and constitutional reality. The repeal of the Digital Security Act and its successors, the reform of the preventive detention framework, the reform of the quota system, the investigations into extrajudicial killings and enforced disappearances, the proposals for strengthened constitutional remedies and an independent human rights commission, and the broader institutional reforms aimed at judicial independence and anti-corruption accountability all represent steps toward the constitutional vision that Mahmudul Islam articulated throughout his career.

Whether these steps will prove sufficient, whether the constitutional culture of Bangladesh will be genuinely transformed by the reform process, whether the institutions created or reformed by the new constitutional framework will develop the capacity and the independence to enforce the fundamental rights of the Constitution against the political pressures that have historically undermined them: these are questions that the constitutional history of the coming years will answer. What Mahmudul Islam's legacy ensures is that there is a constitutional framework, carefully constructed over a lifetime of intellectual labor, that makes the right questions available for the citizens, lawyers, judges, and constitutional advocates who will determine Bangladesh's constitutional future.

The fundamental rights of Bangladesh's Constitution are not merely a catalogue of legal provisions. They are, as Mahmudul Islam consistently argued, commitments that the constitutional community has made to itself, commitments that derive their binding force not merely from the authority of the constitutional text but from the moral and political convictions about human dignity, equality, and freedom that make constitutional government worthy of the obedience and loyalty of the people it governs. To honor those commitments requires not merely the formal procedures of constitutional amendment and judicial enforcement but the constitutional character, the disposition to treat rights as genuinely binding even when their protection is politically inconvenient, that is the deepest and most enduring legacy of Mahmudul Islam's life and work.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART FIVE

The primary sources for this part include Mahmudul Islam's "Constitutional Law of Bangladesh" (3rd ed., Mullick Brothers, 2012), particularly the chapters devoted to each of the fundamental rights in Part III; the Constitution of Bangladesh as amended; the major decisions of the Appellate Division and High Court Division on fundamental rights, including the Mohiuddin Farooque cases on environmental rights and standing, the Ain O Salish Kendra cases on slum dwellers' rights, the Bangladesh National Women Lawyers' Association case on sexual harassment, and the numerous decisions on preventive detention, freedom of expression, and the right to life; and the Constitutional Reform Commission's report of January 2025, particularly its proposals for a merged bill of rights and for expanded fundamental rights provisions.

For the comparative and theoretical dimensions of fundamental rights jurisprudence, the essential readings include: Aharon Barak, "Proportionality: Constitutional Rights and Their Limitations" (Cambridge University Press, 2012); David Feldman, "Civil Liberties and Human Rights in England and Wales" (Oxford University Press, 2nd ed., 2002); Laurence Tribe, "American Constitutional Law" (Foundation Press, 3rd ed., 2000), particularly the chapters on equal protection and the First Amendment; and T.R. Andhyarujina, "Judicial Activism and Constitutional Democracy in India" (N.M. Tripathi, 1992).

For the specific dimensions of free speech, digital rights, and press freedom in Bangladesh, the essential readings include: the Amnesty International briefing "Repackaging Repression: The Cyber Security Act and the Continuing Lawfare against Dissent in Bangladesh" (August 2024); the Freedom House "Freedom on the Net 2025" report on Bangladesh; the Article 19 analysis of the Cyber Protection Ordinance (June 2025); the joint civil society statement on digital governance laws in Bangladesh (Human Rights Watch, February 2025); and the Daily Star analysis by Nadia Rahman and Fariha Ahmed on the legislative history from the ICT Act to the Cyber Protection Ordinance (June 2025).

For the equality and non-discrimination jurisprudence, including the quota reform controversy, the essential readings include: the Supreme Court decisions in the quota reform cases of 2024; the Women's Affairs Reform Commission report of 2025; the Dhaka University Law Journal article on state obligations to gender equality (Vol. 36, No. 1, 2025); and the Daily Star reporting on gender inequality in Bangladesh's labour laws (International Women's Day 2026 supplement).

For the transitional justice dimensions of the fundamental rights analysis, including accountability for extrajudicial killings, enforced disappearances, and deaths in custody, the essential readings include: Odhikar's annual human rights reports; Human Rights Watch's Bangladesh reports for 2024 and 2025; the Amnesty International reports on extrajudicial killings and the Rapid Action Battalion; and the interim government's reports on the enforced disappearances inquiry commission.

For the public interest litigation jurisprudence and constitutional remedies analysis, the essential readings include: S.P. Sathe, "Judicial Activism in India" (Oxford University Press, 2002); the papers on PIL in the Oxford International Journal of Law and Information Technology; and

Ridwanul Hoque, "Judicial Activism in Bangladesh: A Golden Mean Approach" (Cambridge Scholars Publishing, 2011).

End of Part Five. Part Six of this textbook will examine the constitutional framework for the relationship between Bangladesh and the international legal order: the constitutional status of international treaties, the incorporation of international human rights law into domestic constitutional jurisprudence, Bangladesh's participation in international institutions and regional bodies, and the emerging field of international constitutional law as it bears on Bangladesh's constitutional development. Mahmudul Islam's treatment of the international dimensions of constitutional law will be placed in the context of the extraordinary expansion of international constitutional norms and enforcement mechanisms that has occurred in the decades since his first edition, and the implications of that expansion for Bangladesh's constitutional future.

PART SIX

BANGLADESH AND THE INTERNATIONAL LEGAL ORDER: CONSTITUTIONAL THEORY, TREATY LAW, HUMAN RIGHTS INCORPORATION, AND THE HORIZONS OF GLOBAL CONSTITUTIONALISM

A Note on Part Six

The analysis contained in the preceding five parts of this textbook has been concerned, in the main, with the internal architecture of Bangladesh's constitutional order: the foundational principles established in 1972, the separation of powers, the mechanics of parliamentary government, the independence of the judiciary, and the system of fundamental rights and their enforcement. All of these subjects are, of course, profoundly important. They constitute the core of what constitutional law, in its traditional formulation, has been understood to encompass. But there is a dimension of Bangladesh's constitutional life that an exclusively inward-looking analysis cannot adequately capture, and that is the relationship between Bangladesh's constitutional order and the broader international legal system within which Bangladesh exists as a sovereign state, a signatory to numerous international treaties, a member of international organizations, a party to disputes before international tribunals, and increasingly a subject of international scrutiny with respect to the protection of human rights, the maintenance of the rule of law, and the conduct of its democratic governance.

Mahmudul Islam was deeply aware of this international dimension of constitutional law, and his treatment of it in the successive editions of his "Constitutional Law of Bangladesh" reflects both the depth of his comparative learning and the evolution of the international legal order itself during the decades of his scholarly career. The first edition of 1995 appeared at a moment when the international human rights system was still consolidating its post-Cold War institutional architecture, when the major human rights treaty bodies were still developing their jurisprudence, and when the concept of international constitutional law, as a distinct field of inquiry, was only beginning to emerge in academic discourse. By the time of the third edition of 2012, the

landscape had shifted dramatically: the International Criminal Court had been established, the Human Rights Council had replaced the Commission, the treaty bodies had developed extensive jurisprudence on the obligations of states parties, and the idea that international law imposes genuine and enforceable obligations on states with respect to the treatment of their own citizens had moved from being a contested theoretical proposition to being an accepted feature of the international legal order.

Part Six of this textbook undertakes a comprehensive examination of these issues. It begins with the theoretical foundations: the philosophical and jurisprudential debate between monism and dualism as competing theories of the relationship between international and domestic law, and the more recent theoretical developments that have moved beyond this binary framework to embrace more nuanced accounts of constitutional pluralism, constitutional dialogue, and what some scholars now describe as the constitutionalization of international law. It then examines the specific constitutional provisions in Bangladesh's constitution that govern the relationship between domestic and international law, and analyzes how Bangladesh's courts have interpreted and applied those provisions in practice. It proceeds through an examination of Bangladesh's treaty obligations, the incorporation of international human rights norms into domestic constitutional jurisprudence, the role of international institutions in Bangladesh's constitutional life, the specific issues of international accountability for mass atrocity and human rights violations, and the emerging frameworks for what scholars are beginning to call global constitutionalism.

Throughout, the analysis is anchored in Mahmudul Islam's constitutional thought, taking his treatment of each issue as the starting point, while extending and deepening the analysis to engage with the most recent developments in the field, including the extraordinary constitutional reform process that Bangladesh has undergone since the July 2024 uprising and the dramatic expansion of international engagement with Bangladesh's constitutional situation that has characterized the period from 2024 to 2026.

CHAPTER TWENTY-TWO: THE THEORETICAL FOUNDATIONS OF INTERNATIONAL LAW'S RELATIONSHIP WITH DOMESTIC CONSTITUTIONAL ORDER

22.1 The Classic Debate: Monism, Dualism, and the Question of Legal Unity

The relationship between international law and domestic constitutional law is one of the most technically complex and philosophically profound questions in the entire field of jurisprudence. It touches on fundamental issues about the nature of law itself, the sources of legal authority, the basis of state sovereignty, the meaning of constitutional supremacy, and the conditions under which individuals can invoke international legal norms before domestic courts. Understanding this relationship requires beginning with the classic theoretical debate between the two great competing frameworks: monism and dualism.

The dualist position, developed most systematically by the German international lawyer Heinrich Triepel in his 1899 work "Volkerrecht und Landesrecht" (International Law and Municipal Law) and refined by the Italian scholar Dionisio Anzilotti, holds that international law and domestic law are two entirely separate and self-contained legal systems. They are separate because they differ fundamentally in their sources, their subjects, and their content. International law derives from the consent of states, expressed through treaty or customary practice, and its subjects are sovereign states. Domestic law derives from the legislative authority of the sovereign state, and its subjects are individuals within that state's territory. Because the two systems are separate, a rule of international law cannot, by itself, become part of domestic law. For an international obligation to have effect within the domestic legal order, it must be transformed or incorporated into domestic law through the specific legislative act of the domestic lawmaker. Until and unless such transformation occurs, international law and domestic law occupy entirely different spheres, and neither can be directly applied by the courts of the other.

The monist position, associated primarily with the Austrian legal philosopher Hans Kelsen and his colleagues in the Vienna School, holds the opposite view: that international law and domestic law form a single, unified legal system. For Kelsen, all law forms a single hierarchical structure, or *Stufenbau*, in which higher norms validate lower norms, and in which the ultimate foundational norm, the *Grundnorm*, provides the basis for the validity of the entire system. On this view, the distinction between international law and domestic law is not a distinction between two different systems but a distinction within a single system. International law occupies the highest rung in the hierarchy; domestic law is valid only insofar as it is consistent with the international legal framework within which it is embedded. In its pure form, monism implies that domestic courts must apply international law directly, without the need for any domestic legislative act of transformation, and that domestic law that contradicts international law is, in the Kelsenian formulation, simply invalid.

Mahmudul Islam was familiar with both positions, and his treatment of them in his constitutional law book reflects his characteristic intellectual care and his instinct for the nuanced middle ground between theoretical absolutes. He did not adopt a dogmatic monist or dualist position. He recognized, as the best contemporary scholarship has also recognized, that the binary between monism and dualism, while useful as an analytical framework, does not accurately describe the actual practice of most legal systems, including Bangladesh's. Real constitutional orders are neither purely monist nor purely dualist. They exhibit complex patterns of selective incorporation, conditional application, constitutional override, and pragmatic accommodation that resist any simple theoretical categorization.

The point has been made with particular clarity in the scholarship of the twenty-first century. A Cambridge University Press volume from 2024 analyzing the relationship between international, European Union, and national law argues that the classical theories of both Triepel and Kelsen "can no longer comprehensively explain the relationship between international or European Union and national law" precisely because they were developed in a very different historical context and cannot account for the complex patterns of legal interaction that characterize contemporary legal orders. The same observation is amplified in recent scholarship developing what might be called intermediate theoretical positions: pragmatic monism, consent-based monism, constitutional pluralism, and what some scholars propose as a dynamic spectrum theory

that replaces the binary with a continuum of relationships between domestic and international legal norms.

For Bangladesh, the theoretical stakes of this debate are not merely academic. They bear directly on practical constitutional questions of the greatest importance: Can a Bangladeshi citizen invoke the International Covenant on Civil and Political Rights (ICCPR) before a Bangladeshi court? Can a court strike down domestic legislation that contradicts a treaty obligation? What happens when the provisions of an international human rights treaty conflict with the constitutional text? Does the customary international law prohibition on torture apply in Bangladesh's domestic courts, and if so, with what force? Can the International Criminal Court exercise jurisdiction over Bangladeshi nationals for crimes committed in Bangladesh? These questions have been live constitutional questions in Bangladesh, and they remain deeply contested as the constitutional reform process of 2024 to 2026 seeks to define a new relationship between Bangladesh's constitutional order and the international legal system.

22.2 Triepel, Anzilotti, and the Dualist Tradition

To understand why the dualist framework still exercises such powerful influence over constitutional practice in Bangladesh and in most other South Asian legal systems, it is necessary to understand the intellectual logic of dualism and the historical conditions under which it emerged.

Triepel's argument for the separateness of international and domestic law was rooted in what he saw as a fundamental difference in the nature of the legal relationships governed by each system. International law, in Triepel's analysis, governs relations between sovereign states. It deals with the external relations of states, their treaties, their diplomatic relationships, their territorial boundaries, their rights and obligations as members of the family of nations. Domestic law governs relations within the state: between the state and its citizens, among citizens themselves, and between different organs of the state. These are qualitatively different kinds of legal relationships, and they are regulated by qualitatively different kinds of legal norms. A treaty obligation binds a state as a whole in its external relations; it does not, by itself, create rights or duties for individuals within the state's domestic legal order.

Anzilotti developed Triepel's position with greater technical precision, arguing that the fundamental difference between international and domestic law lay in their respective validating criteria. The validity of international law rests on the principle *pacta sunt servanda*, the principle that states must honor their treaty commitments. The validity of domestic law rests on the internal constitutional criteria of the domestic legal order. Because the two systems have different validating criteria, they cannot simply be merged or ranked in a single hierarchy. Each system provides the criteria for the validity of its own norms, and each system is authoritative within its own domain.

The practical implications of the dualist position for a legal system like Bangladesh's are significant. Under a dualist approach, the constitution and the statute book are the primary sources of law before the domestic courts. International treaties, however significant they may be in international law, have effect in domestic courts only to the extent that they have been

incorporated into domestic law through domestic legislative action. If Parliament has enacted legislation implementing a treaty obligation, that legislation binds the courts; the treaty obligation itself, as an international instrument, does not. If Parliament has ratified a treaty without enacting implementing legislation, the treaty has no direct domestic legal effect; it may be relevant as an aid to interpretation of ambiguous domestic provisions, but it cannot be applied directly as a source of enforceable rights.

This dualist approach has been the dominant constitutional tradition in the legal systems that Bangladesh inherited, most notably the British constitutional tradition. The United Kingdom, which provided the model for many of the institutional features of Bangladesh's legal system, has historically maintained a rigorous dualism with respect to international law. The classic British constitutional principle is that treaties are negotiated and ratified by the executive under the royal prerogative, but they have no effect in domestic law until incorporated by Parliament. This principle, which has its roots in the early modern constitutional settlement between Crown and Parliament, reflects the British commitment to parliamentary sovereignty: the idea that Parliament is the supreme lawmaker, and that the executive cannot alter domestic law, including by entering into international treaty commitments, without Parliament's participation.

Bangladesh inherited this dualist tradition through the institutional structures of British colonialism, through the training of its lawyers in the common law tradition, and through the specific provisions of its constitution. But Bangladesh has not, as we shall see, adhered to a pure dualism in practice. The courts have found ways to bring international norms into domestic constitutional discourse that are more creative, more functional, and ultimately more protective of individual rights than a strict dualist approach would permit. And the constitutional reform process of 2024 to 2026 has opened the possibility of a more formal, more systematic approach to the incorporation of international human rights law into Bangladesh's domestic constitutional framework.

22.3 Kelsen, Verdross, and the Monist Tradition

The monist tradition that Kelsen developed in the early twentieth century, and that was refined by his colleague Alfred Verdross and subsequently by a long line of international lawyers and constitutional theorists, begins from a fundamentally different premise about the nature of law. For Kelsen, law is not defined by its content or by its subject matter but by its formal structure: its place in a hierarchy of norms, each of which derives its validity from a higher norm, and the entire structure of which rests ultimately on a foundational *Grundnorm* that is the presupposition of the system's validity.

On this formal, neo-Kantian analysis, there is no principled reason why international law and domestic law should form two separate systems. They can just as easily be understood as parts of a single system. And Kelsen argued that understanding them as a single system was not only theoretically coherent but practically superior, because it provided a more complete account of how states acquire their legal identity and authority. States, on the Kelsenian view, are themselves creatures of international law: they derive their status as sovereign persons in the international order from the recognition that international law confers. Domestic law is valid

insofar as it is authorized by international law, and international law provides the ultimate criterion of validity for all legal norms.

Verdross extended Kelsen's analysis in directions that are particularly relevant for the contemporary debate about global constitutionalism. Verdross argued that international law had a constitutional structure of its own, a set of fundamental norms of a higher order that could not be altered even by the consent of all states. This was the germ of the concept of *jus cogens*: peremptory norms of international law from which no derogation is permitted even by treaty. The recognition of *jus cogens* in the Vienna Convention on the Law of Treaties (1969) represents the formal acceptance by the international community of a principle that is deeply monistic in its logic: the idea that there are certain international legal norms that are not simply the product of state consent but that have a validity and a binding force that is independent of, and superior to, the will of any individual state.

For Bangladesh, the monist tradition is significant in several ways. The concept of *jus cogens* implies that certain international norms, most prominently the prohibitions on genocide, crimes against humanity, torture, and slavery, bind Bangladesh not merely because Bangladesh has ratified the relevant treaties but because these norms have achieved the status of peremptory international law. They cannot be contracted out of; they cannot be superseded by domestic legislation; they cannot be waived by executive action. Whether Bangladesh's courts have fully internalized this understanding of peremptory international norms, and whether the constitutional reform process of 2024 to 2026 will embed it more formally in Bangladesh's constitutional framework, are questions that subsequent sections of this chapter will address.

22.4 Beyond the Binary: Constitutional Pluralism, Transjudicial Communication, and the Contemporary Landscape

Contemporary constitutional theory has moved significantly beyond the classic binary of monism and dualism, developing a range of intermediate and alternative frameworks that better capture the complexity of actual constitutional practice. Three developments are particularly important for understanding the contemporary relationship between international law and Bangladesh's constitutional order.

The first is the concept of constitutional pluralism, associated most prominently with the work of scholars such as Neil MacCormick, Miguel Maduro, and Mattias Kumm. Constitutional pluralism begins from the observation that in a world of overlapping legal orders, including national constitutions, international human rights law, regional human rights regimes, and international institutional frameworks, there is no single, authoritative answer to the question of which legal norm prevails when norms conflict. Each legal order has its own logic of supremacy, its own claim to ultimate authority, and its own criteria for adjudicating conflicts with other legal orders. Constitutional pluralism does not resolve this situation by asserting the supremacy of any one system; instead, it proposes frameworks of dialogue, mutual recognition, and institutional cooperation through which the claims of different legal orders can be accommodated without requiring any one of them to be definitively subordinated to any other.

The constitutional pluralist framework is particularly useful for analyzing Bangladesh's situation because Bangladesh exists within a genuinely pluralist international legal environment. It is subject to obligations under the United Nations Charter and its human rights treaty bodies; it is a party to the Rome Statute of the International Criminal Court and thus subject to that institution's jurisdiction; it is a member of the South Asian Association for Regional Cooperation (SAARC) and, to the limited extent that SAARC has developed legal instruments, subject to those as well; it operates within the broader framework of customary international law; and it has increasingly been subject to international scrutiny, monitoring, and accountability mechanisms of various kinds. The question of how Bangladesh's domestic constitutional order relates to this pluralist international legal environment is the central challenge of the analysis in this part.

The second development is the concept of transjudicial communication, developed by scholars such as Anne-Marie Slaughter and elaborated in the work of constitutional comparatists like Vicki Jackson. Transjudicial communication refers to the process by which constitutional courts in different countries, and between domestic courts and international tribunals, engage in a form of dialogue: citing each other's decisions, developing common principles, learning from each other's constitutional solutions, and gradually building a body of shared constitutional wisdom that transcends the formal boundaries of national legal systems. This process has been particularly significant in the development of international human rights law. The European Court of Human Rights and the Inter-American Court of Human Rights have developed extensive jurisprudence on questions of substantive rights, procedural protections, and state accountability that has been cited and followed by constitutional courts in Asia, Africa, and South America. South Asian constitutional courts, particularly the Supreme Court of India, have been active participants in this process of transjudicial communication, and Bangladesh's courts have followed in their footsteps.

Mahmudul Islam was acutely aware of this phenomenon of transjudicial communication, even if he did not use that precise terminology. His methodology of systematic comparative analysis, drawing on Indian, British, American, and other constitutional jurisprudence, reflected an implicit understanding that constitutional courts exist in a conversation with each other, that constitutional solutions developed in one jurisdiction can provide useful guidance for constitutional problems in another, and that the development of constitutional law is not a purely national enterprise but a partially shared, partially global one.

The third development, and the most significant for the broader trajectory of constitutional theory, is the idea of the constitutionalization of international law: the argument that the international legal order has itself acquired a constitutional character, in the sense of having a hierarchical structure of norms, a set of fundamental principles that constrain the exercise of power even at the international level, mechanisms of accountability for the violation of those principles, and an institutional framework for the authoritative interpretation and application of international legal norms. This argument, developed most fully by scholars such as Anne Peters, Christian Tomuschat, and Bardo Fassbender, does not imply that there is a world government or a world constitution in any formal sense. Rather, it argues that the international legal order has evolved from a simple system of bilateral treaty relationships between sovereign states into something more complex and more structured: a system with peremptory norms (*jus cogens*), universal obligations (obligations *erga omnes*), international institutions with limited but genuine

supranational authority (the UN Security Council, the International Criminal Court, the WTO Appellate Body), and an emerging norm of international human rights accountability that constrains the way in which states treat their own citizens.

For Bangladesh, the constitutionalization of international law has particular significance because it means that Bangladesh's constitutional situation is increasingly shaped not only by domestic constitutional norms but by the international constitutional framework within which Bangladesh operates. The International Criminal Tribunal's prosecution of crimes against humanity committed during the 2024 protests, the UN Human Rights Council's monitoring of Bangladesh's human rights performance, the UN fact-finding mission invited by the interim government in 2024, and the broader international engagement with Bangladesh's constitutional reform process all reflect the practical implications of the constitutionalization of international law for a country undergoing the kind of constitutional transformation that Bangladesh has been experiencing.

CHAPTER TWENTY-THREE: THE CONSTITUTIONAL PROVISIONS GOVERNING INTERNATIONAL LAW IN BANGLADESH

23.1 The Constitutional Text: Articles 25, 145A, and the Preamble

Bangladesh's constitution does not contain an extensive or systematic set of provisions governing the relationship between the domestic legal order and international law. The relevant constitutional text is spread across several provisions, the interpretation of which has generated significant scholarly and judicial attention.

The most directly relevant provision is Article 25, which is located in Part II of the constitution, the part that deals with the Fundamental Principles of State Policy. Article 25(1) provides that "the State shall base its international relations on the principles of respect for national sovereignty and equality, non-interference in the internal affairs of other countries, peaceful settlement of international disputes, and respect for international law and the principles enunciated in the United Nations Charter, and on the basis of those principles shall (a) strive for the renunciation of the use of force in international relations and for general and complete disarmament; (b) uphold the right of every people to determine and govern themselves." Article 25(2) provides that "the State shall endeavour to consolidate, preserve and strengthen fraternal relations among Muslim countries based on Islamic solidarity."

Mahmudul Islam's analysis of Article 25 in his constitutional law book is careful and nuanced. He notes the provision's formal character as a directive principle of state policy, which means that it establishes aspirational guidelines for Bangladesh's foreign policy but is not directly justiciable in court. A citizen cannot bring a constitutional claim in the High Court Division alleging that the government has violated the principle of respect for international law enshrined in Article 25(1); the provision does not confer that kind of directly enforceable right. However, Islam argues, and the courts have generally agreed, that Article 25 is not entirely without legal significance even as a directive principle. It can function as an aid to the interpretation of other constitutional provisions and of domestic legislation; it establishes a constitutional presumption

in favor of compliance with international law; and it may provide a basis for arguing that executive action that is plainly inconsistent with Bangladesh's international legal obligations is constitutionally questionable even if not formally unconstitutional.

This is a significant but subtle distinction, and it is one that Mahmudul Islam navigates with characteristic precision. The principle of constitutional interpretation that he applies here is one that runs deep in the common law tradition: the presumption that Parliament does not intend to legislate in breach of international law. This presumption, which operates as a rule of statutory construction in dualist systems like the United Kingdom, performs a similar function in Bangladesh's constitutional jurisprudence. It does not elevate international law to the status of directly applicable domestic law, but it does mean that domestic statutes and executive actions are, wherever possible, interpreted in a manner consistent with Bangladesh's international legal obligations.

Article 145A, introduced by the Fifteenth Amendment in 2011, deals specifically with the ratification of treaties. It provides that "all treaties with foreign countries shall be submitted to the President who shall cause them to be laid before Parliament." This provision, while brief, is significant for constitutional analysis because it establishes a parliamentary dimension to treaty-making that had not previously been explicit in the constitutional text. Prior to the Fifteenth Amendment, the executive had broad authority to ratify international treaties without parliamentary approval. The insertion of Article 145A introduced, for the first time, a formal requirement of parliamentary scrutiny of international commitments.

The implications of Article 145A for the constitutional status of treaty law in Bangladesh are not yet fully worked out in the case law, and the provision is somewhat ambiguous about what parliamentary scrutiny entails. Does Parliament have the power to refuse to approve a treaty that the government has signed? Does parliamentary approval of a treaty transform it into domestic law, or does it merely provide democratic legitimacy for the executive's decision to ratify? These questions have not been definitively answered by Bangladesh's courts, and the constitutional reform debates of 2024 to 2026 have provided an opportunity to revisit and potentially clarify the constitutional framework for treaty-making and treaty incorporation.

The Preamble to Bangladesh's constitution also contains language relevant to the international dimension. The Preamble declares that Bangladesh is founded on the ideals of nationalism, democracy, and socialism, but it also declares that the Bangladeshi people believe in "the right of every people to determine and govern themselves," a phrase that echoes the international law principle of self-determination and that has been invoked in various constitutional contexts to support the argument that Bangladesh's constitutional commitments include commitments to the international human rights framework that gives effect to that principle.

23.2 The Judicial Approach: Incorporation by Reference and the Role of Interpretive Use

Bangladesh's courts have, over the decades since independence, developed a practice of engaging with international law and international human rights norms that does not fit neatly within either the strict dualist or the strict monist framework. Rather, they have developed what might be called a doctrine of interpretive incorporation: the use of international human rights norms, treaty

provisions, and the jurisprudence of international human rights bodies as tools for the interpretation of domestic constitutional provisions, particularly the fundamental rights provisions of Part III.

This practice has its roots in the approach developed by the Supreme Court of India, which has consistently held that the courts must have regard to international conventions and norms for construing domestic law when there is no inconsistency between them. The landmark Indian decision in *Vishaka v. State of Rajasthan* (1997), in which the Supreme Court of India used the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to develop guidelines on sexual harassment in the workplace, is the most famous example of this interpretive approach. Bangladesh's High Court Division has drawn on this Indian precedent, and on the broader principle that it embodies, in a number of significant cases.

The most important of these cases, in the context of Mahmudul Islam's constitutional analysis, is the line of decisions in which Bangladesh's courts have interpreted the right to life in Article 32 expansively, drawing on the evolving content of the right to life in international human rights law to extend the domestic constitutional right beyond the protection against arbitrary killing to encompass positive rights to a healthy environment, to adequate nutrition, to shelter, and to minimum conditions of human dignity. This interpretive expansion of the right to life mirrors the approach of the Indian Supreme Court in its landmark decisions on the right to life, and both the Bangladeshi and Indian developments can be understood as reflecting the influence of the international human rights framework, particularly the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the General Comments issued by the Committee on Economic, Social and Cultural Rights, on the domestic constitutional jurisprudence of South Asian courts.

Mahmudul Islam's treatment of this interpretive approach is approving but measured. He acknowledges the important constitutional work that interpretive incorporation of international norms performs: it allows Bangladesh's courts to keep pace with the evolving content of international human rights law without requiring the cumbersome machinery of domestic legislation every time an international norm develops or is clarified. It provides a principled basis for the expansion of constitutional rights beyond the relatively brief text of the 1972 Constitution's rights provisions. And it connects Bangladesh's constitutional jurisprudence to the broader global conversation about the content and scope of fundamental human rights, a conversation that is conducted in the decisions of the European Court of Human Rights, the Inter-American Court of Human Rights, the Human Rights Committee, and the treaty bodies of the United Nations human rights system.

But Islam is also alert to the constitutional risks of an unbounded use of international norms as interpretive tools. He notes that if courts use international law not merely to clarify ambiguous constitutional provisions but to override clear constitutional text on the basis of evolving international standards, they risk undermining the constitutional sovereignty of Bangladesh's elected legislature and the authority of the constitutional text itself. He also notes the questions of institutional competence: Bangladesh's courts may not always be well-equipped to assess the content and authority of international human rights norms, to evaluate the weight to be given to the pronouncements of different international bodies, or to determine the extent to which an

international norm reflects a genuine consensus across different legal traditions and constitutional cultures rather than the preferences of one region or legal tradition.

These are real and serious concerns, and they have not been resolved by the development of the case law. They remain live constitutional issues, particularly as the constitutional reform process of 2024 to 2026 considers whether to embed a more formal and systematic framework for the incorporation of international human rights norms into Bangladesh's domestic constitutional law.

23.3 The Status of Customary International Law

Separate from the question of treaty law, there is the question of customary international law: the body of legal norms that arises from the consistent practice of states, accompanied by a belief that such practice is legally required (*opinio juris*). Customary international law includes norms such as the prohibition on genocide, the prohibition on torture, the prohibition on slavery, the rules of state responsibility, the principles of diplomatic immunity, and numerous other principles that have achieved acceptance across the international community.

In many legal systems, customary international law is treated as automatically part of domestic law, without the need for any implementing legislation. The principle, traceable in the common law tradition to the famous dictum in the eighteenth-century English case of *Triquet v. Bath* (1764), is that international law is part of the law of the land. Under this principle, a court can apply a rule of customary international law directly, without any act of domestic incorporation, provided that no domestic statute or constitutional provision conflicts with it.

Bangladesh has not definitively resolved the question of whether customary international law is automatically part of domestic law in this sense. The courts have sometimes cited customary international law principles without addressing the theoretical question of how they become part of Bangladesh's domestic legal order. This ambiguity is itself significant: it reflects a pragmatic rather than dogmatic approach to the international/domestic law relationship, one that allows courts to draw on the resources of customary international law when it serves the purposes of constitutional interpretation and rights protection without committing to a theoretical position that might create difficulties in other cases.

Mahmudul Islam's treatment of this issue is, as usual, careful and realistic. He notes the tradition of citing customary international law in South Asian courts, tracing it through the colonial period to the present, and acknowledges that the practical effect of this tradition has been to introduce many principles of customary international law into Bangladesh's domestic legal discourse. But he is cautious about asserting that customary international law has, in any formal sense, the status of domestic law in Bangladesh, given the absence of any clear constitutional provision establishing this relationship and the courts' inconsistent practice on the issue.

The recent constitutional reform debates have not directly addressed this question, which suggests that it remains one of the open constitutional issues that the next phase of constitutional development will need to confront. The Constitutional Reform Commission's report of January 2025, while extensive in its coverage of many constitutional issues, does not appear to have provided a definitive resolution of the theoretical framework for the relationship between

customary international law and domestic law. This is an area in which further constitutional development, whether through legislation, judicial decision, or constitutional amendment, will be necessary.

CHAPTER TWENTY-FOUR: BANGLADESH'S INTERNATIONAL TREATY OBLIGATIONS: A CONSTITUTIONAL MAPPING

24.1 The Architecture of Bangladesh's Treaty Commitments

Bangladesh has, since its independence in 1971, accumulated an extensive body of international treaty commitments that constitute a significant dimension of its constitutional situation. These commitments span the entire range of international law: from the United Nations Charter to the major human rights treaties, from environmental agreements to trade and investment treaties, from humanitarian law conventions to international criminal law instruments. Understanding the constitutional significance of this body of treaty obligations requires both a mapping of the main categories of commitment and an analysis of how these commitments interact with Bangladesh's domestic constitutional framework.

The most foundational of Bangladesh's international commitments is its membership in the United Nations, formalized through Bangladesh's admission to the UN on September 17, 1974. Membership in the United Nations carries with it acceptance of the obligations of the UN Charter, which is the constitutional instrument of the international order. The Charter establishes obligations of peaceful settlement of disputes, non-use of force, non-interference in the internal affairs of other states, and cooperation in the promotion of human rights and fundamental freedoms. It also establishes the authority of the Security Council to take binding decisions on matters of international peace and security, including decisions that may directly affect the domestic constitutional situation of member states.

The human rights dimensions of Bangladesh's UN membership deserve particular attention. The Charter's references to human rights, contained in Articles 1(3), 55, and 56, have been interpreted by the international community as creating genuine legal obligations on member states to promote and respect human rights, even if those obligations are more general in character than the specific obligations contained in the major human rights treaties. Bangladesh has reaffirmed its UN human rights commitments through the Universal Periodic Review process of the Human Rights Council, under which all UN member states are subject to a periodic review of their human rights performance, with the participation of other states and civil society organizations.

Beyond the Charter, Bangladesh has ratified a substantial number of the major multilateral human rights treaties. It is a party to the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, which establishes the right of individuals to submit communications to the Human Rights Committee alleging violations of their ICCPR rights. It is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR). It has ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention Against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of Persons with Disabilities (CRPD).

One of the most significant developments in Bangladesh's international treaty practice in the period covered by this analysis is the accession, in August 2024, to the International Convention for the Protection of All Persons from Enforced Disappearance (CED). This accession, which occurred among the first acts of the interim government following the July 2024 uprising, was a direct response to the devastating history of enforced disappearances under the previous Hasina administration, and it carries profound constitutional and legal significance. The CED obligates Bangladesh not only to criminalize enforced disappearance under domestic law but also to investigate all alleged cases of enforced disappearance, to bring the perpetrators to justice, and to provide reparations to the victims and their families.

The timing and context of Bangladesh's CED accession are philosophically and constitutionally significant in a way that goes beyond the specific legal obligations the treaty creates. The accession represented a public constitutional statement by the interim government that Bangladesh's constitutional order was committing itself to the international human rights framework on one of the most serious categories of human rights violation: the practice of state-sponsored disappearances that had been used systematically by the previous government as an instrument of political repression. It was, in constitutional terms, an act of constitutional self-definition: a declaration that Bangladesh would be the kind of state that takes enforced disappearance seriously as a crime against humanity, submits itself to international scrutiny on this issue, and accepts the legal obligations that follow from that submission.

24.2 Reservations, Declarations, and the Limits of International Commitment

A full understanding of Bangladesh's treaty obligations requires attention not only to which treaties Bangladesh has ratified but to what reservations and declarations Bangladesh has appended to those ratifications. The practice of appending reservations to treaty ratifications is itself constitutionally significant: it reflects the tension between the desire to participate in the international human rights framework and the desire to maintain the primacy of domestic law, including domestic constitutional and religious law, over international obligations.

Bangladesh's ratification of CEDAW is a particularly instructive example. Bangladesh ratified CEDAW in 1984, but appended reservations to Articles 2 and 16(1)(c), which deal with the obligation to take all appropriate measures to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women, and with the obligation to ensure equality of rights for men and women in respect of marriage and family relations. The reservation to Article 16(1)(c) was based on the incompatibility of that provision with the principles of personal law applicable to Muslim citizens of Bangladesh under the Muslim Family Laws Ordinance, which governs marriage, divorce, and inheritance for Muslims.

This reservation reflects a profound constitutional tension that runs through Bangladesh's entire constitutional history: the tension between the secular and gender-egalitarian commitments expressed in the 1972 Constitution and the religious personal law that governs the family relations of the majority of Bangladesh's citizens. The CEDAW reservation effectively

acknowledges that Bangladesh's constitutional commitment to gender equality has not, in practice, been extended to the domains of marriage and family, where the authority of Islamic personal law has been maintained in preference to the principle of gender equality. This is a constitutional compromise that has been criticized extensively by women's rights advocates, both within Bangladesh and internationally, and that the Women's Affairs Reform Commission's report of 2025, with its recommendations for the criminalization of marital rape and reform of inheritance law, has placed squarely on the agenda of Bangladesh's current constitutional reform process.

Mahmudul Islam's analysis of CEDAW and its constitutional implications is characteristically measured. He acknowledges the significance of Bangladesh's CEDAW ratification as an international commitment to gender equality, while also acknowledging the difficult constitutional reality that the reservation to Article 16(1)(c) substantially limits the treaty's practical reach in the areas of domestic life where gender inequality is most deeply embedded. He notes the doctrinal argument that the reservation may itself be invalid under international law, because Articles 2 and 16 are regarded by the CEDAW Committee as core provisions of the Convention, and a reservation that is incompatible with the object and purpose of a treaty is impermissible under customary international law. But he also notes the political and constitutional reality that any attempt to remove the reservation without a broader constitutional settlement of the relationship between secular constitutional principles and Islamic personal law would generate intense political controversy.

The Women's Affairs Reform Commission's recommendations of 2025, which generated the large Hefazat-e-Islam protest of 20,000 people in Dhaka opposing the proposed reforms, illustrate precisely this political reality. The constitutional reform process cannot resolve the CEDAW reservation issue without engaging with the deeper question of the constitutional relationship between the secular principle of gender equality and the religious personal law that has been accepted as part of Bangladesh's constitutional framework since independence. This is one of the most difficult and most consequential constitutional questions that Bangladesh faces, and it is one that Mahmudul Islam's constitutional analysis illuminates but cannot, by itself, resolve.

24.3 Bangladesh's Engagement with the International Human Rights Treaty Body System

The international human rights treaty bodies, including the Human Rights Committee under the ICCPR, the Committee on Economic Social and Cultural Rights under the ICESCR, the Committee on the Elimination of Discrimination Against Women under CEDAW, the Committee Against Torture under the CAT, and the Committee on the Rights of the Child under the CRC, constitute a significant institutional framework for international oversight of Bangladesh's constitutional performance on human rights. Understanding how this system works and how it has engaged with Bangladesh's constitutional situation is essential to any analysis of Bangladesh's position in the international legal order.

The treaty body system operates primarily through a reporting mechanism: states parties are required to submit periodic reports to the relevant treaty body, which examines the report and the state's human rights performance and issues Concluding Observations identifying areas of

concern and making recommendations for improvement. In addition, the Optional Protocol to the ICCPR establishes an individual communications mechanism through which individuals can submit complaints to the Human Rights Committee alleging violations of their ICCPR rights, provided that they have exhausted domestic remedies.

Bangladesh's engagement with the treaty body system has been inconsistent. It has submitted its required reports, sometimes late, and has engaged with the treaty bodies' Concluding Observations through formal responses and periodic updates. But the record of actual implementation of treaty body recommendations has been poor. Successive governments have received Concluding Observations expressing concern about extrajudicial killings, enforced disappearances, restrictions on freedom of expression and association, the use of preventive detention, discrimination against women and minorities, and the conditions of detention in Bangladesh's prisons, and have generally responded with formal assurances of reform that have not been translated into consistent changes in practice.

This pattern of formal engagement and practical non-compliance is itself a constitutional issue of significance. It raises the question of whether the treaty body system, as currently constituted, is capable of generating meaningful constitutional change in states like Bangladesh that have the political will to maintain formal participation in the international human rights framework while resisting its practical demands. This is a question that the broader scholarly literature on the effectiveness of international human rights law has addressed with increasing sophistication in recent years, developing theories of socialization, legitimation, and strategic litigation that seek to explain the conditions under which international human rights norms actually change state behavior.

The events of 2024 and after have introduced a new dynamic into Bangladesh's relationship with the treaty body system. The interim government's invitation to the Office of the United Nations High Commissioner for Human Rights (OHCHR) to send a fact-finding team to investigate human rights abuses during the 2024 protests was a significant departure from the previous government's defensive and often obstructive posture toward international human rights scrutiny. The fact-finding report, published in February 2025, which found that police, border guards, the Rapid Action Battalion, and intelligence agencies had engaged in serious human rights violations during the protests, leading to the killing of approximately 1,400 people, represented one of the most significant pieces of international accountability documentation in Bangladesh's history.

24.4 The Rome Statute and International Criminal Jurisdiction

One of the most significant developments in Bangladesh's international legal position in recent years has been the intensification of international criminal law dimensions in its constitutional situation. The International Criminal Court (ICC), established by the Rome Statute which entered into force in 2002, has jurisdiction over the most serious crimes of concern to the international community: genocide, crimes against humanity, war crimes, and the crime of aggression. Bangladesh ratified the Rome Statute in 2010, making it a state party to the ICC and subjecting it to the obligations and the potential jurisdiction of that court.

The constitutional significance of the Rome Statute for Bangladesh is substantial and multi-dimensional. At the most fundamental level, it means that Bangladeshi nationals can, in principle, be investigated and prosecuted by the ICC for crimes within its jurisdiction, even for crimes committed within Bangladesh's own territory, if the national judicial system is unwilling or unable genuinely to investigate and prosecute such crimes. This is the principle of complementarity: the ICC's jurisdiction is not primary but complementary to national jurisdiction, and it arises only when national systems fail.

The complementarity principle creates a powerful constitutional incentive for Bangladesh to maintain a functioning and genuinely independent domestic criminal justice system capable of investigating and prosecuting the most serious human rights violations. If Bangladesh's domestic courts are captured by political considerations, if prosecutions are selective or manipulated, if defendants do not receive fair trials, or if genuine accountability for mass atrocity crimes is simply not pursued, the space opens for the ICC to assert its complementarity jurisdiction. This is not a hypothetical concern: the ICC has asserted complementarity jurisdiction in a number of situations where domestic courts failed to meet the standard of genuine investigation and prosecution, and Bangladesh's record of accountability for extrajudicial killings, enforced disappearances, and the violence of the security forces has historically been very poor.

The July 2024 uprising and its aftermath have brought these ICC-related constitutional questions into sharp relief. The interim government's establishment of the International Crimes Tribunal (ICT) to prosecute crimes against humanity committed during the 2024 protests, and its investigation of former Prime Minister Sheikh Hasina and others for alleged crimes against humanity, raise complex questions about the relationship between Bangladesh's domestic accountability mechanisms and the international criminal law framework. The ICT is a domestic special court that was originally established in 2010 to prosecute crimes from the 1971 Liberation War, and it has been criticized for procedural shortcomings and fair trial violations. Its repurposing to address the crimes of 2024 raises serious questions about whether the proceedings meet the international standards that the complementarity principle requires.

The ICT's November 2025 decision sentencing former Prime Minister Hasina to death for crimes against humanity committed during the 2024 protests is constitutionally extraordinary. Whatever one thinks of the substantive determination, the constitutional and international legal questions that it raises are profound. The death penalty itself is increasingly regarded as incompatible with international human rights law, including the Second Optional Protocol to the ICCPR, to which Bangladesh is a party, and the CIVICUS assessment notes that the tribunal's retention of the death penalty is "contrary to international norms." The proceeding of a special court in the absence of the accused, who is currently in exile in India, raises questions about fair trial rights that are guaranteed both by the ICCPR and by customary international human rights law. And the fact that the tribunal's jurisdiction was extended by executive action rather than through normal legislative channels raises questions about its constitutional basis.

Mahmudul Islam's constitutional framework provides essential tools for analyzing these questions. His insistence on the importance of constitutional procedures, his emphasis on the rights of the accused as a constitutional constraint on the exercise of criminal jurisdiction, his analysis of the separation of powers as a protection against the use of criminal prosecution as a

political instrument, and his treatment of international law as a framework within which Bangladesh's constitutional commitments must be understood all bear directly on the evaluation of the ICT proceedings as a constitutional matter.

CHAPTER TWENTY-FIVE: INTERNATIONAL HUMAN RIGHTS LAW AND DOMESTIC CONSTITUTIONAL JURISPRUDENCE

25.1 The ICCPR and Its Constitutional Reception in Bangladesh

The International Covenant on Civil and Political Rights is the most comprehensive international treaty on civil and political rights, and it covers virtually all of the rights guaranteed by Part III of Bangladesh's Constitution. Understanding the relationship between the ICCPR and Bangladesh's domestic constitutional rights framework is therefore central to any analysis of the constitutional dimension of Bangladesh's international human rights obligations.

Bangladesh ratified the ICCPR in 2000, and the Optional Protocol establishing the individual communications mechanism at the same time. This was a relatively late ratification, occurring more than a quarter-century after the Covenant entered into force in 1976, and it reflected the complex and sometimes antagonistic relationship that successive Bangladeshi governments had maintained with the international human rights system. But the ratification, once made, created a formal legal framework for the relationship between ICCPR obligations and Bangladesh's domestic constitutional rights.

The doctrinal relationship between the ICCPR and Bangladesh's constitutional rights framework is complex, and it cannot be adequately described either as simple equivalence or as simple hierarchy. On one level, there is a large overlap: most of the rights guaranteed by the ICCPR find their domestic counterpart in Part III of Bangladesh's Constitution. The right to life in Article 6 ICCPR corresponds to the right to life and personal liberty in Article 32 of the Constitution. The prohibition of torture and cruel, inhuman, and degrading treatment in Article 7 ICCPR corresponds to the constitutional protection against torture that has been developed by Bangladesh's courts through the interpretive expansion of Article 32. The fair trial rights in Articles 9 and 14 ICCPR correspond to the constitutional protections against arbitrary arrest and detention in Articles 33 and 35. The freedom of expression in Article 19 ICCPR corresponds to the constitutional freedom of thought and speech in Article 39.

But there are also significant differences of scope and content that are constitutionally important. The ICCPR in several respects provides more comprehensive protection than the express text of Bangladesh's constitutional rights provisions. Article 17 of the ICCPR, which guarantees privacy rights including the right to protection of correspondence and communications, is more expansive than the corresponding provision of Article 43 of the Constitution. Article 26 of the ICCPR, which guarantees an autonomous right to equality and non-discrimination not dependent on the enjoyment of other Covenant rights, goes beyond the more limited non-discrimination provisions of Articles 27-29 of the Constitution. And the Human Rights Committee's interpretation of these provisions, developed in its General Comments and in its jurisprudence

under the Optional Protocol, has in many respects pushed the content of these rights further than Bangladesh's own courts have been willing to go.

The question of what happens when the ICCPR's requirements, as interpreted by the Human Rights Committee, exceed what Bangladesh's domestic constitutional jurisprudence provides is one of the central unresolved questions in Bangladesh's constitutional law. Under a strict dualist approach, the answer is clear: the Human Rights Committee's views are international legal documents that have no direct domestic legal effect, and Bangladesh's courts are bound by the domestic constitutional provisions as they have interpreted them, not by the Committee's pronouncements. Under a more integrative approach, the Committee's interpretation of the Covenant's provisions, to which Bangladesh has committed itself, would be treated as a persuasive guide to the interpretation of the corresponding domestic constitutional provisions, and would provide a basis for the evolution of domestic constitutional jurisprudence in the direction of greater rights protection.

Bangladesh's courts have not definitively resolved this question, and the result is a degree of doctrinal uncertainty that serves neither the principle of constitutional clarity nor the practical purpose of rights protection. The constitutional reform process of 2024 to 2026 offers an opportunity to provide greater clarity, by establishing a clearer framework for the domestic reception of international human rights treaty obligations and for the authoritative interpretation of their relationship to domestic constitutional rights.

25.2 The Convention Against Torture and the Constitutional Prohibition on Inhumane Treatment

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is particularly significant for Bangladesh's constitutional analysis given the extensive documentation of torture and cruel treatment in Bangladesh's detention facilities, the use of enforced disappearances as an instrument of political repression, and the institutional culture of impunity that has characterized the approach of Bangladesh's security forces to allegations of torture and ill-treatment.

Bangladesh ratified the CAT in 1998. The treaty creates absolute obligations: there are no circumstances, including war, threat of war, internal political instability, or any other public emergency, in which torture can be justified. The prohibition on torture is also regarded as a norm of *jus cogens*, a peremptory norm of customary international law that binds states regardless of whether they have ratified the CAT, and that can never be derogated from even in times of emergency.

The constitutional translation of the CAT's obligations into Bangladesh's domestic legal framework has been partial and inadequate. Bangladesh does not have a comprehensive anti-torture statute that fully implements the CAT's requirements. The evidence collected by the Commission of Inquiry into Enforced Disappearances, which submitted its preliminary report describing the "systematic design" of enforced disappearances and uncovering "grim evidence of torture and inhumane conditions at secret detention sites operated by Bangladeshi security

agencies," makes clear that the institutional framework for the prevention of torture has been profoundly deficient.

Mahmudul Islam's analysis of the constitutional dimensions of the prohibition on torture draws on both the domestic constitutional framework and the international legal framework. He traces the constitutional prohibition on cruel and inhuman treatment through Article 32 (right to life and personal liberty), Article 35(5) (which explicitly prohibits torture and cruel, inhuman, or degrading punishment or treatment), and the broader constitutional commitment to human dignity that animates Part III. He notes that Article 35(5), unlike many other constitutional rights provisions, contains no derogation clause: it cannot be suspended even in a state of emergency, which places it in the same constitutional category as the most fundamental of constitutional protections.

The connection between the constitutional prohibition on torture in Article 35(5) and the CAT's absolute prohibition reflects a moment of constitutional convergence between domestic and international law that is analytically significant. Both the domestic constitutional provision and the international treaty norm treat the prohibition on torture as absolute and non-derogable. This convergence strengthens the constitutional case for giving the CAT's provisions direct constitutional force in Bangladesh, even under a generally dualist approach, because it is difficult to argue that incorporating CAT obligations more fully into domestic law would require overriding any domestic constitutional norm. On the contrary, a more complete domestic implementation of the CAT would be consistent with and supportive of the existing constitutional framework.

The proposal, advanced in the context of the constitutional reform process, for the establishment of an independent National Preventive Mechanism (NPM) to monitor places of detention in accordance with the Optional Protocol to the CAT, to which Bangladesh has not yet acceded, represents one of the most important potential constitutional developments in the area of torture prevention. An independent NPM, with genuine authority to inspect all places where persons are deprived of their liberty, including intelligence agency detention facilities, would represent a significant strengthening of the constitutional mechanism for enforcing the prohibition on torture, and would bring Bangladesh closer to full compliance with its CAT obligations.

25.3 CEDAW and the Constitutional Dimensions of Gender Equality

The constitutional implications of Bangladesh's CEDAW ratification, its reservations, and the evolving content of the CEDAW framework extend well beyond the formal question of treaty status. They bear on some of the most fundamental and most contested issues in Bangladesh's constitutional law: the principle of gender equality, the constitutional status of personal law based on religious tradition, the obligations of the state to promote substantive equality for women, and the relationship between constitutional and international law in the domain of gender rights.

As noted in the previous section, Bangladesh's reservation to CEDAW Articles 2 and 16(1)(c) reflects a fundamental constitutional tension between the secular principle of gender equality and the continuing authority of Islamic personal law over matters of family life. This tension has

deep historical roots. The 1972 Constitution declared gender equality as a fundamental right (Article 28) but did not disturb the existing framework of personal law, which treats men and women differently in matters of marriage, divorce, inheritance, and guardianship. The Eighth Amendment of 1988, which declared Islam the state religion, did not formally change the constitutional text of Article 28, but it created an additional constitutional dimension to the tension between gender equality and religious law.

The CEDAW Committee, in its Concluding Observations on Bangladesh's periodic reports, has consistently and firmly criticized the CEDAW reservations and called for their withdrawal. It has also identified a wide range of areas in which Bangladesh's laws and practices fall short of CEDAW's requirements: the absence of legal protection against marital rape, discriminatory inheritance laws, the persistence of child marriage despite the minimum age requirements (and the controversial amendment of 2017 that introduced a special exception to the minimum age without specifying a minimum, creating what critics described as a legal loophole for the marriage of very young girls), the under-representation of women in public life and decision-making, and the pervasive gender-based violence that remains inadequately addressed by the legal system.

The Women's Affairs Reform Commission's recommendations of April 2025, which included criminalizing marital rape, providing equal parental rights for women, reforming inheritance laws to provide for greater equality, and increasing women's parliamentary representation, represent a direct engagement with the CEDAW framework. They are also, as the Hefazat-e-Islam protest of 2025 illustrated, deeply politically contested. The constitutional question is whether Bangladesh's commitments under CEDAW, as a matter of international law, provide a constitutional basis for overriding the religious personal law that currently governs many of the areas the Commission's recommendations address.

This is ultimately a question about the constitutional status of Bangladesh's international treaty obligations, and it illustrates the central importance of the theoretical framework discussed in earlier sections of this chapter. If Bangladesh adopts a genuinely monist approach, or a strongly integrative interpretive approach, then the CEDAW obligations, including the obligation to eliminate discriminatory family law practices, would have constitutional force capable of overriding inconsistent domestic law, including personal law based on religious tradition. If Bangladesh maintains a strictly dualist approach, then CEDAW obligations would bind the state in international law but would not, without further implementing legislation, constitute domestic law capable of overriding the existing personal law framework.

The truth, as Mahmudul Islam's constitutional analysis would suggest, lies somewhere between these theoretical poles, and the resolution requires a combination of constitutional interpretation, legislative action, and judicial development that cannot be accomplished by the international treaty framework alone. The international framework provides the normative standard: full gender equality in all areas of life, including family law. The domestic constitutional framework provides the rights provisions: the principle of equality before the law and non-discrimination on the basis of sex. The gap between the normative standard and the constitutional reality must be closed through democratic deliberation, constitutional development, and ultimately the transformation of the political culture that sustains gender inequality.

25.4 Children's Rights and the Constitutional Framework: The CRC Dimension

The Convention on the Rights of the Child, which Bangladesh ratified in 1990, has had a significant influence on the development of Bangladesh's constitutional law on children's rights, particularly through the instrument of public interest litigation before the High Court Division. The CRC establishes a comprehensive framework of rights for children, including the right to life and survival, the right to development, the right to protection from all forms of abuse and exploitation, and the right to participation in decisions that affect them.

The "best interests of the child" principle, which the CRC articulates as a primary consideration in all actions concerning children, has been incorporated into Bangladesh's judicial practice in ways that go beyond the formal constitutional text. Courts have invoked the best interests principle in custody disputes, in cases involving child labor, in cases involving children in conflict with the law, and in cases involving the educational rights of children from marginalized communities. This incorporation of the CRC's central organizing principle into Bangladesh's domestic constitutional jurisprudence, without any formal domestic legislation implementing the CRC, represents another example of the interpretive incorporation methodology that characterizes Bangladesh's practical approach to international human rights law.

The CRC's provisions on child marriage are directly relevant to one of the most significant constitutional controversies of recent years: the Child Marriage Restraint Act of 2017 and its much-criticized special exception provision. The CRC, and the CEDAW framework as it applies to children, require states to set a minimum age of marriage at eighteen years for both boys and girls, without exception. The 2017 amendment, which introduced a special exception to the minimum age requirement "in special cases, in the best interests of the child" without specifying any minimum age for the exception, was criticized by international human rights bodies, by UNICEF, and by domestic civil society organizations as creating a legal framework for child marriage that is fundamentally incompatible with Bangladesh's CRC and CEDAW obligations.

The constitutional reform process of 2024 to 2026 has addressed the child marriage issue as part of the Women's Affairs Reform Commission's recommendations. The Commission has recommended strengthening the legal framework against child marriage and removing the special exception that has been so widely criticized. This recommendation directly engages Bangladesh's international treaty obligations under the CRC and CEDAW, and its adoption would represent a significant step toward aligning Bangladesh's domestic constitutional framework with its international human rights commitments.

CHAPTER TWENTY-SIX: BANGLADESH AND INTERNATIONAL INSTITUTIONS: CONSTITUTIONAL DIMENSIONS

26.1 Bangladesh in the United Nations System

Bangladesh's participation in the United Nations system is a central dimension of its international constitutional position, and it has implications for domestic constitutional law that extend well

beyond the specific treaty obligations already discussed. The UN Charter, the Universal Periodic Review mechanism of the Human Rights Council, the Security Council's authority to take binding decisions, and the role of UN specialized agencies in Bangladesh's development and governance all constitute features of the international institutional framework within which Bangladesh's constitutional order operates.

The Universal Periodic Review (UPR) process, established by the Human Rights Council in 2006, is particularly significant for Bangladesh's constitutional analysis. Under the UPR, all UN member states are subject to a periodic review of their human rights situation, conducted by the Working Group of the Human Rights Council on the basis of a state report, reports from UN special procedures and treaty bodies, and submissions from civil society organizations. The UPR produces a set of recommendations by other states, to which the reviewed state responds by indicating which recommendations it accepts and which it notes but does not accept.

Bangladesh has undergone three UPR cycles to date, and the recommendations it has received and accepted constitute a significant body of internationally agreed standards for Bangladesh's domestic human rights performance. The gap between the accepted recommendations and Bangladesh's actual constitutional practice has been a consistent theme of civil society reporting on Bangladesh's human rights situation. The interim government's approach to the UPR process, and specifically its willingness to accept a broader range of recommendations than its predecessors, represents a significant shift in Bangladesh's engagement with this dimension of the international constitutional framework.

The Human Rights Council's resolutions on specific human rights situations, while not legally binding in the same way as Security Council resolutions under Chapter VII of the Charter, constitute authoritative expressions of the international community's assessment of states' human rights performance. The Council's attention to Bangladesh's human rights situation has intensified significantly in the period since the 2024 uprising, with the fact-finding report of February 2025 providing a detailed account of the serious human rights violations committed during the protests. The recommendation by Human Rights Watch in early 2025 that the interim government bring a consensus resolution at the Human Rights Council to ensure continued UN monitoring and reporting reflects the broader understanding that international institutional engagement is a valuable mechanism for supporting constitutional reform in states undergoing democratic transition.

26.2 The Security Council and Bangladesh

The UN Security Council's authority to take binding decisions under Chapter VII of the Charter on matters of international peace and security is the most direct form of international institutional authority over the domestic affairs of UN member states. While Bangladesh has not been the subject of Security Council action in the post-independence period, the Security Council's potential relevance to Bangladesh's constitutional situation is not entirely hypothetical.

The Security Council has, in a number of situations, taken action under Chapter VII that has directly affected the domestic constitutional order of member states, including the establishment of international criminal tribunals (for the former Yugoslavia and Rwanda), the imposition of

targeted sanctions on individuals and entities, and the authorization of international humanitarian interventions. The developing doctrine of the Responsibility to Protect (R2P), endorsed by the World Summit in 2005, articulates the principle that the international community, acting through the Security Council, has a responsibility to protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity when their own governments fail to do so.

The Bangladesh Liberation War of 1971 and the mass atrocities committed by the Pakistani army constitute one of the foundational cases in the intellectual history of humanitarian intervention. The international community's failure to prevent the genocide of 1971, and the eventual Indian military intervention that ended it, contributed to the development of the arguments for a more robust international responsibility to protect civilian populations from mass atrocity that eventually found expression in the R2P doctrine. Bangladesh therefore has a particular historical relationship with the development of this doctrine, as both a victim of the failure of international protection in 1971 and as a state that now operates within a normative framework that seeks to prevent similar failures in the future.

26.3 Bangladesh's Role in International Peacekeeping

One of the most significant and internationally recognized dimensions of Bangladesh's participation in the international institutional framework is its remarkable contribution to United Nations peacekeeping operations. Bangladesh has, since its first peacekeeping deployment in the 1980s, become one of the largest contributors of military and police personnel to UN peacekeeping missions around the world. At various points, Bangladesh has been the single largest troop-contributing country to UN peacekeeping operations, deploying tens of thousands of uniformed personnel to missions in Africa, the Middle East, and elsewhere.

The constitutional significance of Bangladesh's peacekeeping role is multifaceted and underexplored in the existing constitutional scholarship. On one level, it is a dimension of Bangladesh's foreign policy and its relationship with the international institutional framework that falls within the executive's broad authority over foreign affairs. On another level, however, it raises significant constitutional questions about the authority to deploy Bangladeshi forces in potentially lethal situations outside Bangladesh's territory, about the accountability framework for the conduct of Bangladeshi peacekeepers, and about the relationship between Bangladesh's constitutional obligations to its soldiers and the international legal framework governing UN peacekeeping operations.

Mahmudul Islam's constitutional analysis does not extend to the constitutional dimensions of peacekeeping, which is perhaps understandable given that the peacekeeping role, while significant, had not generated the kind of constitutional litigation that would naturally draw the attention of a constitutional lawyer. But the constitutional issues are real and important, and they deserve more systematic attention in Bangladesh's constitutional scholarship.

The constitutional basis for the executive's authority to deploy forces on peacekeeping missions is not clearly established in the constitution, which was drafted in the early 1970s before the scale of Bangladesh's eventual peacekeeping contribution was imaginable. The question of parliamentary oversight of peacekeeping deployments is similarly unresolved. And the

accountability framework for misconduct by Bangladeshi peacekeepers, including the sexual exploitation and abuse cases that have led to investigations involving Bangladeshi peacekeepers in several missions, raises constitutional and international law questions about the intersection of military discipline, criminal jurisdiction, and international humanitarian law standards.

26.4 SAARC and Regional Constitutionalism: A Comparative Assessment

The South Asian Association for Regional Cooperation (SAARC), established by the SAARC Charter signed in Dhaka in 1985, is the primary regional intergovernmental organization within which Bangladesh operates. SAARC's membership includes Bangladesh, India, Pakistan, Nepal, Bhutan, Sri Lanka, Maldives, and Afghanistan. The organization's stated purposes include the promotion of peace, stability, and regional cooperation in economic, social, cultural, and technical dimensions.

From a constitutional law perspective, SAARC has been significantly less legally developed than regional organizations in other parts of the world, particularly the European Union and, to a lesser extent, the African Union. SAARC lacks a regional court or human rights mechanism of the kind that exists in Europe (the European Court of Human Rights), the Americas (the Inter-American Court of Human Rights), or Africa (the African Court on Human and Peoples' Rights). It has not developed a binding legal framework on human rights that could serve as the basis for regional constitutional accountability comparable to that provided by the European Convention on Human Rights or the American Convention on Human Rights.

This absence of a developed regional human rights mechanism in South Asia is constitutionally significant for Bangladesh in a negative sense: it means that Bangladesh's citizens cannot, unlike citizens of European or Inter-American states parties to regional human rights conventions, bring human rights claims before a regional court that applies a regional human rights standard to which their government has committed itself. The regional accountability architecture within which Bangladesh operates for human rights purposes is the global UN system, rather than a more immediately accessible regional framework.

The question of whether South Asia should develop a regional human rights mechanism has been discussed in academic and policy circles for decades. The institutional and political obstacles are considerable: the deep mutual suspicion between India and Pakistan, which dominates the SAARC political environment; the enormous differences in size, economic development, and political systems among the SAARC members; and the lack of political will, particularly among the larger states, to subject themselves to the scrutiny of a regional human rights court. These obstacles are not insurmountable, as the experience of other regional systems demonstrates, but overcoming them would require a fundamental shift in the political culture of South Asian regionalism.

The comparison with the Association of Southeast Asian Nations (ASEAN) is instructive in this context. ASEAN, which has also been criticized for its limited human rights architecture, established the ASEAN Intergovernmental Commission on Human Rights in 2009 and adopted the ASEAN Human Rights Declaration in 2012. While these instruments are considerably weaker than the European or Inter-American human rights frameworks, they represent a

beginning of regional human rights institutionalization in Southeast Asia. The absence of any comparable development in South Asia reflects the greater institutional fragility of SAARC and the more intractable political obstacles to South Asian regionalism.

For Bangladesh's constitutional development, the weakness of regional human rights mechanisms means that the primary external accountability framework remains the global UN human rights system. This makes the quality of Bangladesh's engagement with UN human rights bodies, including the Human Rights Committee, the Committee Against Torture, the CEDAW Committee, and the Human Rights Council, all the more constitutionally important.

CHAPTER TWENTY-SEVEN: INTERNATIONAL ACCOUNTABILITY FOR MASS ATROCITY: THE CONSTITUTIONAL DIMENSIONS OF TRANSITIONAL JUSTICE

27.1 Transitional Justice as a Constitutional Category

The concept of transitional justice, which refers to the range of judicial and non-judicial mechanisms through which societies emerging from authoritarian rule, civil conflict, or systematic human rights abuse seek to address the legacy of past violations, hold perpetrators accountable, provide redress to victims, and build the institutional foundations for a constitutional order in which similar violations will not recur, has become one of the central conceptual frameworks for analyzing the constitutional situation of states like Bangladesh in the post-2024 period.

Bangladesh's transitional justice situation is extraordinarily complex, involving at least two distinct layers of historical injustice: the atrocities of the 1971 Liberation War, for which accountability has been pursued through the International Crimes Tribunal since 2010, and the systematic human rights violations of the Hasina government's fifteen-year rule, for which accountability mechanisms have been established by the interim government since August 2024. Understanding the constitutional dimensions of this multi-layered transitional justice agenda requires engaging with the international frameworks for transitional justice, the constitutional constraints on the design of accountability mechanisms, and the relationship between domestic accountability processes and the international criminal law framework.

Mahmudul Islam's constitutional framework does not directly address the concept of transitional justice as a systematic matter, which is understandable given that the transitional justice literature did not achieve its current level of development and sophistication until the 1990s and 2000s. But his constitutional thinking is deeply relevant to the transitional justice questions that Bangladesh now faces, because transitional justice is ultimately an application of the constitutional principles that he spent his career analyzing: the rule of law, the independence of the judiciary, the rights of the accused, the principle of equality before the law, and the constitutional commitment to human dignity.

The international framework for transitional justice is extensive and growing. The United Nations has developed a substantial body of guidance on the design and implementation of

transitional justice mechanisms, including the 2004 Secretary-General's report on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies," the 2010 "Guidance Note on the United Nations Approach to Transitional Justice," and numerous reports of the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence. This international framework emphasizes four key pillars of transitional justice: the right to truth, the right to justice, the right to reparation, and guarantees of non-recurrence.

27.2 The 1971 Accountability Process and Its Constitutional Dimensions

The International Crimes Tribunal established in 2010 to prosecute crimes against humanity, genocide, and war crimes committed during the 1971 Liberation War represents Bangladesh's primary domestic transitional justice mechanism for the atrocities of independence. The ICT's proceedings have been among the most constitutionally significant and internationally scrutinized developments in Bangladesh's legal history since 1972.

The constitutional framework for the ICT is unusual and constitutionally complex. The tribunal was established under the International Crimes (Tribunals) Act of 1973, which was one of the earliest pieces of legislation enacted after Bangladesh's independence. The 1973 Act, as amended over the years, creates a special court with jurisdiction over crimes against humanity, genocide, war crimes, and crimes against peace, without a statute of limitations. The Appellate Division of the Supreme Court has jurisdiction to hear appeals from the ICT's decisions.

The constitutional validity of the ICT and the 1973 Act has been challenged before Bangladesh's courts on a number of grounds, including the grounds that the tribunal's procedures do not meet the constitutional standards of fair trial, that the retrospective application of criminal liability violates the principle against retroactive punishment enshrined in Article 35(1) of the Constitution, and that the tribunal's composition and appointment process do not satisfy the constitutional requirement of judicial independence. The Supreme Court has upheld the constitutional validity of the ICT against these challenges, but the proceedings have continued to generate intense constitutional and international legal debate.

The international scrutiny of the ICT's proceedings has been substantial and largely critical. Human rights organizations including Amnesty International, Human Rights Watch, and the International Centre for Transitional Justice have documented specific cases in which the ICT's procedures fell short of international fair trial standards: inadequate time and facilities for the preparation of defense cases, denial of access to witnesses and evidence, the use of hearsay evidence without adequate procedural safeguards, and an appeals process that has been criticized for allowing the prosecution to seek harsher sentences on appeal, contrary to the principle of double jeopardy that Article 35(2) of Bangladesh's Constitution guarantees.

These criticisms raise fundamental constitutional questions. If Bangladesh is committed, as Article 25 of its Constitution declares, to respect for international law, and if international law requires that persons tried for even the most serious crimes receive fair trials meeting international standards, then the conduct of the ICT proceedings must be assessed not only against the domestic provisions of the 1973 Act but against the international fair trial standards to which Bangladesh has committed itself through the ICCPR and customary international law.

Mahmudul Islam's constitutional analysis, with its characteristic insistence on procedural constitutional rights as a fundamental dimension of constitutional government, provides essential tools for this assessment. His treatment of the constitutional rights of the accused, including the right to a fair trial, the right to adequate time and facilities for the preparation of a defense, the prohibition on double jeopardy, and the prohibition on retrospective punishment, all have direct relevance to the evaluation of the ICT proceedings against constitutional standards. The point is not that those responsible for the 1971 atrocities should not face accountability. The point is that accountability processes that violate constitutional standards undermine the constitutional order they purport to defend.

27.3 Accountability for Post-2024 Violations

The transitional justice dimensions of Bangladesh's post-2024 constitutional situation are, if anything, more constitutionally complex than the 1971 accountability process. The interim government has simultaneously been pursuing accountability for the serious human rights violations committed by the security forces during the July-August 2024 protests (which resulted in the killing of approximately 1,400 people), investigating the broader pattern of systematic enforced disappearances and extrajudicial killings that characterized the fifteen years of Hasina's rule, and conducting proceedings before the ICT against senior members of the Awami League government.

The Commission of Inquiry into Enforced Disappearances, established in August 2024, had received over 1,850 complaints by August 2025 and was working to document the systematic practice of enforced disappearances that the preliminary report described. The commission faced significant obstacles, including the deliberate destruction of evidence by security force officers, limited cooperation from the institutions responsible for the disappearances, and the sheer scale of the investigative task. The extension of the commission's mandate through December 2025 to complete its work reflects both the scope of the violations and the institutional difficulties of transitional accountability.

The constitutional significance of the Enforced Disappearances Commission is multi-dimensional. As a body investigating violations of the most fundamental constitutional rights, including the right to life and the right to personal liberty, it embodies the constitutional principle that the state cannot disappear its own citizens without accountability. As a body operating within the framework of the Convention on Enforced Disappearances, to which Bangladesh acceded in August 2024, it provides a mechanism for implementing Bangladesh's new international treaty obligations in the specific domain of enforced disappearance. And as a truth-telling mechanism that operates outside the formal criminal justice system, it raises the transitional justice question of how truth, justice, and reparation are to be integrated into a coherent constitutional framework.

The October 2024 filing of charges against 28 people for alleged involvement in enforced disappearances, and the subsequent investigation of senior security officials and political leaders, represents the accountability dimension of the post-2024 transitional justice process. The constitutional framework for these prosecutions is complex: they involve allegations of crimes for which, until Bangladesh's recent accession to the CED and the passage of implementing

legislation, there was no specific domestic criminal provision. The question of whether existing domestic law is adequate to prosecute enforced disappearances, and whether new legislation adequately implements the CED framework, is a pressing constitutional issue that has not been fully resolved.

The proposed legislation on enforced disappearances that was being developed in 2025 attracted criticism from human rights organizations for a significant gap: it excluded from its scope enforced disappearances committed in a "widespread" or "systematic" manner, leaving those to the jurisdiction of the ICT. This is constitutionally and legally problematic, because a domestic statute on enforced disappearances that does not cover the most serious and systematic cases essentially creates a jurisdictional gap: the ordinary domestic criminal law cannot reach the most serious violations, and the ICT, with its focus on 1971 crimes and now its extension to 2024 crimes, may not be institutionally well-suited to address the full spectrum of post-2024 enforced disappearance cases.

The international law framework is clear on this point. The CED obliges Bangladesh to criminalize enforced disappearance as an autonomous offense under domestic law, and to ensure that the domestic legal framework provides for the investigation and prosecution of all enforced disappearances, including those that constitute crimes against humanity. A legislative framework that excludes "widespread" or "systematic" enforced disappearances from the scope of the domestic offense law would not fulfill this obligation and would leave Bangladesh in breach of its CED commitments.

27.4 Reparations and Non-Recurrence: The Constitutional Architecture of Transitional Justice

The transitional justice framework encompasses not only accountability and truth-telling but also reparations for victims and guarantees of non-recurrence: the institutional reforms designed to ensure that the conditions that made past violations possible are eliminated and that the constitutional order is reconstructed in a way that makes their recurrence less likely.

The interim government's commitment to institutional reform, encompassing the judiciary, the electoral system, public administration, the police, the anti-corruption framework, and the constitution itself, represents Bangladesh's response to the requirement of non-recurrence in the transitional justice framework. Each of these reform commissions is, in constitutional terms, engaged in the work of redesigning the institutional architecture of Bangladesh's constitutional order so that the kinds of abuse that characterized the Hasina years, and that have recurred in various forms throughout Bangladesh's constitutional history, become institutionally less possible.

The Constitutional Reform Commission's proposals of January 2025, the July Charter of October 2025, and the Implementation Order of November 2025 constitute the most ambitious attempt in Bangladesh's history to systematically redesign the constitutional framework along lines consistent with the international human rights standards that Bangladesh has committed to. The proposals include the introduction of a bicameral parliament, term limits for the Prime Minister and President, strengthened judicial independence mechanisms, a reformed Anti-Corruption

Commission, a new National Human Rights Commission, stronger protection for freedom of expression and information, and an expanded bill of rights incorporating both civil and political rights and economic, social, and cultural rights.

The reparations dimension of Bangladesh's transitional justice obligations has been less systematically addressed. The CED obliges Bangladesh to ensure that the victims of enforced disappearances and their families receive comprehensive reparations, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. The question of how to fund and implement a comprehensive reparations program for the victims of systematic human rights violations, in a country with Bangladesh's economic constraints, is one of the most difficult practical constitutional challenges that the transition process faces.

CHAPTER TWENTY-EIGHT: THE EMERGING FIELD OF GLOBAL CONSTITUTIONALISM AND ITS IMPLICATIONS FOR BANGLADESH

28.1 Global Constitutionalism: Theory and Practice

The concept of global constitutionalism, which has emerged as one of the most ambitious and contested theoretical frameworks in contemporary international legal scholarship, holds that the international legal order has developed, or is developing, a constitutional character in a meaningful and not merely metaphorical sense. The argument, associated most prominently with scholars such as Anne Peters, Bardo Fassbender, Erika de Wet, and Armin von Bogdandy, is that the international legal order has acquired the structural features that define constitutionalism: a hierarchy of norms, fundamental rights constraints on the exercise of power, mechanisms of accountability and judicial review, and an institutional framework for the authoritative interpretation and application of constitutional norms.

The global constitutionalism framework draws support from several developments in the international legal order. The recognition of peremptory norms of *jus cogens*, which bind all states regardless of their consent and cannot be derogated from even by treaty, provides a normative hierarchy within international law analogous to the constitutional hierarchy in domestic law. The recognition of obligations *erga omnes*, which are owed to the international community as a whole rather than to any specific state, and the consequent standing of any state to seek their enforcement, resembles the constitutional mechanisms for public law enforcement in which any citizen can challenge violations of constitutional norms. The establishment of the International Criminal Court, with its authority to hold individuals criminally accountable for the most serious international crimes regardless of their official status, represents the emergence of international criminal constitutional law in the fullest sense.

For Bangladesh, the global constitutionalism framework has important practical implications. If the international legal order has a constitutional character, then Bangladesh's domestic constitutional order does not operate in isolation but is embedded within and constrained by an international constitutional framework. Bangladesh's constitution is not, on this analysis, the supreme law of Bangladesh in an absolute sense; it operates within the framework of

international constitutional norms that set limits on what even a constitutional amendment can validly accomplish.

This implication is constitutionally radical, and it is contested. The most important challenge to the global constitutionalism framework comes from scholars who emphasize the continuing centrality of state sovereignty as the foundational principle of the international order and who argue that the constitutionalization of international law is either descriptively inaccurate (most international law still operates on the basis of state consent, without the mandatory character that true constitutional law requires) or normatively dangerous (concentrating authority in international institutions that lack democratic legitimacy and accountability). The tension between the global constitutionalism framework and the traditional state-sovereignty-based understanding of international law reflects a genuine and unresolved philosophical debate about the nature of the international order.

Recent scholarship, particularly the work on global constitutionalism published by the Max Planck Institute for Comparative Public Law and International Law, has sought to develop a more nuanced account of global constitutionalism that acknowledges both its promise and its limitations. The 2024 Cambridge Handbook of Constitutional Theory, which includes chapters on international organizations as constitution-shapers and on the interplay between domestic and international constitutional frameworks, represents the current state of the scholarly conversation. The conclusion that emerges from this scholarship is that global constitutionalism is better understood as a tendency or a direction of development than as an accomplished fact: the international legal order has developed constitutional features, but it remains far from the kind of fully developed constitutional system that exists at the national level in states with strong constitutional traditions.

28.2 Bangladesh's Constitutional Position in the Global Constitutional Order

Bangladesh's position within the evolving global constitutional order is one of a state that is simultaneously deeply embedded in the international institutional framework, significantly constrained by its treaty obligations, subject to growing international accountability for its domestic human rights performance, and in the midst of a constitutional reform process that is seeking to bring its domestic constitutional framework into greater alignment with international constitutional standards.

This position reflects the broader situation of what scholars sometimes call the "Global South" in the development of global constitutionalism: states that were not the primary architects of the international constitutional framework (which was largely built by Western states in the aftermath of World War II), that sometimes experience international accountability mechanisms as forms of neo-colonial interference in their internal affairs, but that also benefit from the international human rights framework as a resource for their own democratic and constitutional development.

Bangladesh's engagement with the international constitutional framework since the 2024 uprising illustrates both dimensions of this position. On one hand, the interim government has actively embraced international engagement: inviting the OHCHR fact-finding mission, acceding

to the CED, engaging with reform commissions that draw on international constitutional models, accepting recommendations from international human rights bodies, and seeking technical assistance from international organizations in the design of constitutional reforms. On the other hand, there is a strong current in Bangladesh's political culture that regards certain aspects of international constitutional scrutiny as externally imposed constraints on Bangladesh's sovereign right to determine its own constitutional future.

The tension between these two orientations is itself constitutionally productive, in the sense that it drives the development of a constitutional discourse that is neither purely domestic nor purely international but genuinely hybrid: drawing on both the domestic constitutional tradition, including the legacy of Mahmudul Islam and the generation of constitutional lawyers who built Bangladesh's constitutional law, and the international constitutional framework, including the evolving standards of international human rights law and the developing architecture of global constitutionalism.

28.3 Constitutional Dialogue and Comparative Constitutionalism in the Digital Age

One of the most significant developments in the relationship between international and domestic constitutional law in the decade since Mahmudul Islam's death in 2016 has been the intensification of transjudicial communication and comparative constitutional dialogue facilitated by digital technology and the global accessibility of constitutional materials.

Constitutional courts and judges around the world now have immediate access, through electronic databases and online resources, to the constitutional decisions of courts in other jurisdictions, the jurisprudence of international human rights bodies, the academic literature of comparative constitutional law, and the developing standards of international constitutional practice. This accessibility has accelerated the process of constitutional cross-fertilization and has made the development of a global constitutional conversation not merely possible but inevitable.

Bangladesh's courts are participants in this global constitutional conversation, though perhaps less extensively and systematically than the courts of some other jurisdictions. The citation of Indian Supreme Court decisions in the High Court Division and Appellate Division is well established and extensive. The citation of British, American, and Canadian constitutional decisions is also significant. The citation of international human rights body decisions and reports, including decisions of the Human Rights Committee and reports of UN Special Rapporteurs, has become more common in recent years. And the citation of academic constitutional scholarship, including both domestic scholarship in the tradition of Mahmudul Islam and the growing body of international comparative constitutional scholarship, has enriched the intellectual quality of Bangladesh's constitutional jurisprudence.

The digital dimension of this transjudicial communication has also changed the nature of public constitutional discourse in Bangladesh. Constitutional arguments that were once confined to the courtroom and the law library are now available to a much wider public through online platforms, social media, and digital legal resources. The July 2024 uprising, which was itself organized and sustained through social media and digital communication networks, also involved

significant constitutional discourse conducted in the digital public sphere: arguments about the constitutionality of the quota system, about the constitutional right to protest, about the constitutional obligations of the security forces, and about the constitutional requirements for accountability for human rights violations were all debated publicly in ways that reflect the democratization of constitutional discourse in the digital age.

28.4 International Humanitarian Law and Bangladesh's Constitutional Framework

International humanitarian law, also known as the laws of armed conflict, governs the conduct of armed hostilities and the protection of persons who are not or are no longer participating in armed conflict. The principal instruments of international humanitarian law are the four Geneva Conventions of 1949 and their Additional Protocols. Bangladesh acceded to the Geneva Conventions in 1972, one of the first acts of the new state, reflecting the profound connection between Bangladesh's founding experience as a victim of systematic violations of the laws of war during the Liberation War and its commitment to the international humanitarian law framework.

The constitutional significance of international humanitarian law for Bangladesh is primarily historical and symbolic, given that Bangladesh has not been involved in armed conflict since 1971. But there are dimensions of international humanitarian law that remain constitutionally relevant in the current context. The Geneva Conventions' provisions on the treatment of prisoners of war and civilians in armed conflict provide standards against which the conduct of Bangladesh's security forces in internal conflict situations, including counter-terrorism operations and the suppression of the 2024 protests, can be assessed.

The question of whether the situation that existed in Bangladesh during the July-August 2024 protests constituted an armed conflict within the meaning of international humanitarian law, or whether it was a situation of internal disturbance to which international human rights law (rather than international humanitarian law) primarily applies, is a question that has been addressed in various contexts but that has not been definitively resolved in relation to Bangladesh's specific situation. The February 2025 UN fact-finding report, which applied international human rights law standards rather than international humanitarian law to assess the conduct of the security forces during the protests, reflects the view that the situation was one of internal disturbance rather than armed conflict. This characterization has significant implications for the applicable legal standards and for the nature of the accountability obligations that the situation generates.

28.5 International Investment Law and Its Constitutional Implications

A dimension of Bangladesh's international legal position that receives insufficient attention in constitutional analyses is the growing body of international investment law, including the bilateral investment treaties (BITs) and free trade agreements (FTAs) that Bangladesh has entered into with various states, and the international investment arbitration framework that these treaties establish.

Bangladesh has concluded bilateral investment treaties with a significant number of states, including many of its major trading and investment partners. These treaties typically include

provisions protecting foreign investors against expropriation without adequate compensation, guaranteeing fair and equitable treatment, and providing for the resolution of investment disputes through international arbitration, typically at the International Centre for Settlement of Investment Disputes (ICSID) or through ad hoc arbitration under the UNCITRAL rules.

The constitutional significance of international investment arbitration is considerable and has been the subject of significant academic debate in recent years. When a foreign investor brings a claim against Bangladesh before an international arbitral tribunal, the tribunal is not a domestic court operating within Bangladesh's constitutional framework; it is an international body applying the standards established by the relevant investment treaty and international investment law. If the tribunal finds that Bangladesh has violated its investment treaty obligations, it can award substantial damages against Bangladesh, payable from the public treasury.

The constitutional questions that arise from this framework are profound. Can the executive, through the executive's authority to negotiate and ratify international treaties, commit Bangladesh to international obligations that constrain the constitutional authority of Parliament to legislate in the public interest? If Parliament enacts legislation designed to protect the environment, public health, or workers' rights, and an international arbitral tribunal finds that this legislation constitutes an indirect expropriation of a foreign investor's investment, can the resulting international arbitral award override a democratically enacted constitutional exercise of legislative power?

These questions are not hypothetical. International investment arbitration has generated significant controversy in recent years across many jurisdictions, with international arbitral tribunals sometimes issuing awards that appear to constrain states' regulatory autonomy in ways that many constitutional lawyers and political theorists regard as incompatible with constitutional democracy. The "right to regulate" doctrine that has emerged in international investment law jurisprudence, which seeks to preserve states' authority to regulate in the public interest while still protecting legitimate investor expectations, represents an attempt to navigate this constitutional tension, but it has not been fully resolved.

CHAPTER TWENTY-NINE: THE CONSTITUTIONAL REFORM PROCESS AND THE INTERNATIONAL DIMENSION

29.1 The July Charter and International Constitutional Standards

The July National Charter of October 2025, signed by the National Consensus Commission and 24 political parties, and given legal force by the Implementation Order of November 2025, represents the most significant constitutional reform initiative in Bangladesh's history. Its more than 80 reform proposals, nearly half of them constitutional in nature, are the product of an extensive process of consultation and deliberation that has drawn on both domestic constitutional traditions and international constitutional standards.

The international dimension of the July Charter is pervasive. The proposals for a bicameral parliament, term limits for political leaders, judicial independence mechanisms, an independent Anti-Corruption Commission, a National Human Rights Commission, and expanded fundamental rights provisions all reflect the influence of international constitutional best practices as they have been developed in constitutional systems around the world and as they have been articulated in the recommendations of international bodies, including the Venice Commission on Democracy through Law of the Council of Europe and the various UN agencies and treaty bodies that have engaged with Bangladesh's constitutional situation.

The Venice Commission, while primarily an institution of the Council of Europe and therefore not directly applicable to Bangladesh, has developed a substantial body of opinions and guidelines on constitutional design that are widely regarded as authoritative international constitutional standards. Its guidelines on judicial independence, on the design of human rights commissions, on electoral systems, and on constitutional amendment procedures have been influential in constitutional reform processes across the world, including in states outside the Council of Europe that have sought to align their constitutional frameworks with international best practices.

The Constitutional Reform Commission's report of January 2025, which provided the foundation for many of the July Charter's proposals, reflects the influence of these international constitutional standards. The proposals for the separation of the judiciary from the executive, for the establishment of an independent constitutional court, for the creation of a merged bill of rights incorporating both civil and political rights and economic, social, and cultural rights, and for the strengthening of procedural safeguards for constitutional rights enforcement all align with the direction of international constitutional development.

29.2 The Referendum Question and International Democratic Standards

The July Charter's provision for a referendum on its key constitutional changes, to be held on the same day as the next general elections (scheduled for February 2026), raises significant questions about the constitutional legitimacy of the reform process and its compliance with international democratic standards.

The relationship between constitutional change and democratic legitimacy is one of the central issues in contemporary constitutional theory. The international framework for democratic governance, as articulated in instruments such as the International IDEA's "Declaration of Principles for International Election Observation" and the UN Electoral Assistance Division's "ACE Electoral Knowledge Network," emphasizes the importance of inclusive, transparent, and participatory constitutional processes. A constitutional referendum that excludes major political parties from the preceding negotiation process, that is conducted in a political environment marked by bans on the largest opposition party and the prosecution of its leaders, and that follows a period of significant political repression raises serious questions about whether the democratic legitimacy standard is fully met.

These are not merely procedural questions. They go to the heart of constitutional theory's fundamental concern with the basis of constitutional authority. A constitution derives its

legitimacy not only from the procedural correctness of the process by which it was adopted but from the depth and breadth of popular endorsement that it can claim. A constitutional reform that has the support of 24 political parties but that has been negotiated without the participation of the Bangladesh Awami League, which represents the political allegiance of a substantial portion of the population, may have a weaker claim to comprehensive democratic legitimacy than one that emerges from a more fully inclusive process.

Mahmudul Islam's constitutional philosophy, with its emphasis on the relationship between constitutional authority and democratic consent, provides a framework for analyzing these legitimacy questions. He consistently argued that constitutional law is not merely a technical framework of rules but an expression of the political community's values and commitments, and that the authority of constitutional provisions derives ultimately from the consent and allegiance of the people it governs. A constitutional reform process that is perceived by a significant portion of the population as imposed or exclusionary risks creating a constitutional framework that lacks the legitimacy necessary to generate the compliance and the political culture that effective constitutionalism requires.

29.3 The National Human Rights Commission and International Standards

Among the constitutional reform proposals that have the most direct connection to Bangladesh's international human rights obligations is the proposal for a genuinely independent National Human Rights Commission (NHRC). The NHRC currently exists but has been widely criticized for its lack of independence, its inadequate resources, and its failure to provide effective oversight and redress for human rights violations. The GANHRI's downgrading of the NHRC to "B" status in 2015, reflecting its assessment that the institution only partially complies with the Paris Principles on national human rights institutions, captures the extent of the problem.

The Paris Principles, adopted by the UN General Assembly in 1993, establish the international standards for the design and operation of national human rights institutions. They require that NHRIs have a broad constitutional or legislative mandate that includes the promotion and protection of human rights, genuine independence from the government, pluralistic representation in their composition, adequate resources to carry out their functions, and the power to receive and investigate complaints. These standards are directly relevant to the constitutional design of the reformed NHRC that Bangladesh's constitutional reform process is contemplating.

The Amnesty International analysis of 2025 identifies the specific legislative reforms needed to bring the NHRC Act into compliance with the Paris Principles, including: ensuring that the NHRC's funding is protected by a guaranteed minimum budgetary allocation that cannot be revoked by the government; establishing a genuinely independent appointment process for commissioners; broadening the NHRC's mandate to cover all human rights violations, including those committed by military and intelligence agencies; and providing the NHRC with effective investigative powers and the ability to make binding recommendations.

The constitutional design of a reformed NHRC is not simply a technical legislative question; it involves fundamental constitutional choices about the relationship between the institution and

the three branches of constitutional government. An NHRC that is truly independent of the executive, that has sufficient authority to investigate and report on violations by all arms of the state including the security forces, and that has the resources and the political backing to make its recommendations effective, would represent a significant strengthening of the constitutional mechanisms for human rights accountability in Bangladesh.

29.4 Mahmudul Islam's Legacy and the International Constitutional Future

The constitutional reforms of 2024 to 2026 are, in a profound sense, the culmination of the constitutional project that Mahmudul Islam spent his career advancing. His insistence on the supremacy of the constitutional text, his commitment to judicial independence as the guardian of constitutional rights, his understanding of fundamental rights as genuine entitlements rather than aspirational promises, and his constitutional philosophy rooted in the dignity and liberty of the individual all find their contemporary expression in the reform proposals that are now being debated and implemented.

But the international dimension of the contemporary constitutional reform process goes beyond what Islam's work directly anticipated, or at least directly addressed. The degree of international engagement in Bangladesh's constitutional situation that has characterized the post-2024 period, the sophistication of the international constitutional standards being applied to Bangladesh's reform proposals, and the global constitutional conversation within which Bangladesh's constitutional development is now embedded all represent developments that have occurred in the years since his work reached its fullest expression.

What remains constant, and what connects Islam's constitutional legacy to the contemporary reform process, is the underlying commitment to what he would have recognized as the fundamental purpose of constitutional government: the protection of individual rights against the arbitrary exercise of state power, the maintenance of a constitutional order in which political authority is genuinely accountable to the people it governs, and the establishment of institutional arrangements that make constitutional promises real rather than merely formal.

The international legal framework, with all its complexity and its limitations, serves this constitutional purpose in the contemporary world. International human rights law is not a foreign imposition on Bangladesh's constitutional order but a set of standards that Bangladesh has itself endorsed, standards that reflect the same fundamental commitments that animated the independence struggle of 1971 and the constitutional project of 1972. When the international community holds Bangladesh accountable to those standards, it is holding Bangladesh to commitments that Bangladesh has made, in its own name and on behalf of its own people.

This is the constitutional meaning of Bangladesh's engagement with the international legal order: not a surrender of sovereignty to external authority but an affirmation of the constitutional values that Bangladesh's founding generation, including the generation of constitutional lawyers to which Mahmudul Islam belonged, identified as the foundation of the constitutional promise that independent Bangladesh made to itself.

CHAPTER THIRTY: CONTROVERSIES AND THEORETICAL FAULT LINES IN BANGLADESH'S INTERNATIONAL CONSTITUTIONAL ENGAGEMENT

30.1 The Sovereignty Paradox: Constitutional Self-Determination and International Constraint

One of the most persistent and philosophically deepest tensions in the analysis of Bangladesh's international constitutional position is what might be called the sovereignty paradox: the tension between the constitutional principle of popular sovereignty, which holds that Bangladesh's constitutional order derives its authority from the will of the Bangladeshi people and is therefore accountable only to them, and the principle of international accountability, which holds that Bangladesh's human rights performance is a matter of legitimate international concern and is subject to scrutiny, monitoring, and accountability through international institutional mechanisms.

This paradox is not unique to Bangladesh; it characterizes the situation of every state that participates in the international human rights system. But it has particular resonance in the Bangladeshi context, given the country's history of struggle for self-determination and independence. The argument for sovereignty, in the Bangladeshi context, draws on the painful historical memory of Bangladesh's experience as the subordinated wing of Pakistan, denied its democratic rights and its cultural identity, and ultimately subjected to genocidal violence by a state that claimed the authority of its own sovereignty as justification for the suppression of Bangladeshi self-determination. For Bangladeshis who experienced or were shaped by that history, the invocation of sovereignty as a protection against external interference carries moral weight that cannot be dismissed.

But the same history that gives the sovereignty argument its Bangladeshi resonance also provides the most powerful arguments against it. The genocide of 1971 was itself an exercise of sovereignty: Pakistan claimed the right, as a sovereign state, to suppress the democratic aspirations of its own citizens by force. The international community's failure to intervene effectively to stop the genocide, and the consequent dependence of Bangladesh's liberation on Indian military intervention rather than on international institutional protection, was itself a consequence of the primacy of sovereignty in the international order of 1971.

The evolution of the international order since 1971, including the development of the Responsibility to Protect doctrine, the establishment of the International Criminal Court, and the strengthening of the international human rights accountability framework, represents a partial but significant qualification of the absolute sovereignty principle. The argument is not that sovereignty is illegitimate but that sovereignty does not shield the exercise of state power against its own citizens from international accountability: that the protection of human dignity is a matter of international concern that cannot be entirely insulated behind the wall of sovereign right.

Mahmudul Islam was not directly engaged with this theoretical debate at the level of international relations theory, but his constitutional philosophy provides a clear set of values for resolving it. His commitment to human dignity as the foundational value of constitutional law, his insistence that constitutional authority derives from the consent of the governed, and his

understanding that constitutional government exists to protect individuals against the arbitrary exercise of power all point toward an understanding of sovereignty that is conditional on the fulfillment of those constitutional purposes. A state that systematically violates the constitutional rights of its citizens has forfeited the moral claim that gives sovereignty its legitimacy.

30.2 The Legitimacy of International Accountability Mechanisms

A related set of controversies concerns the legitimacy of the specific international accountability mechanisms through which international scrutiny of Bangladesh's constitutional performance is conducted. The Human Rights Council, the treaty bodies, the ICT, and the OHCHR have all been subjects of controversy in the Bangladeshi context, raising questions about institutional design, procedural fairness, and the political dynamics that shape international accountability processes.

The Human Rights Council, established in 2006 to replace the discredited Human Rights Commission, has been criticized for its politicization: the tendency of states to form voting blocs that protect each other from criticism regardless of their actual human rights records, and the use of the Council as a platform for geopolitical competition rather than genuine human rights accountability. These criticisms are valid at a general level, and they reflect real limitations of the Council as an accountability institution.

But the criticisms do not, as is sometimes argued in the Bangladeshi political context, invalidate the process of international human rights scrutiny as such. Even an imperfect international accountability mechanism is better than no international accountability mechanism at all, and the Council's engagement with Bangladesh's human rights situation, including its support for the OHCHR fact-finding process and its monitoring of the reform process, has provided a degree of external accountability that has been valuable in sustaining the reform momentum.

The treaty bodies, which operate with greater technical independence from political considerations than the Council, have been more consistently focused on the substantive content of states' human rights obligations and the gap between legal commitments and actual performance. The Human Rights Committee's Concluding Observations on Bangladesh's ICCPR compliance, the CEDAW Committee's observations on gender equality, and the Committee Against Torture's observations on Bangladesh's compliance with the CAT have collectively provided a detailed and consistent picture of Bangladesh's human rights situation that has been valuable both for domestic constitutional advocates and for the international community.

The controversy over the ICT's proceedings against those responsible for 1971 atrocities, including the international fair trial concerns that have been extensively documented, illustrates the specific legitimacy challenges of domestic special courts operating in a politically charged transitional justice environment. These concerns are real, and they cannot be dismissed simply because the crimes being prosecuted are genuine and serious. The principle that even the worst criminals are entitled to fair trials is not a technicality but a constitutional value of the first importance: a fair trial is not a privilege extended to the accused but a constraint on the power of the state that reflects the constitutional commitment to the rule of law.

30.3 Rohingya Crisis and the International Constitutional Dimension

No analysis of Bangladesh's international constitutional position in the contemporary period can ignore the extraordinary humanitarian and constitutional challenge posed by the Rohingya refugee crisis. Bangladesh is host to over one million Rohingya refugees, the majority of whom fled Myanmar following the genocidal violence of 2016-2017, and over 100,000 of whom have arrived since early 2024, fleeing ongoing conflict between the Myanmar military and the Arakan Army.

The Rohingya crisis has multiple constitutional dimensions for Bangladesh. At the international law level, Bangladesh has been an active participant in the efforts to hold Myanmar accountable for the genocide of the Rohingya, supporting the case brought by The Gambia against Myanmar before the International Court of Justice (ICJ) under the Genocide Convention. Bangladesh's support for the ICJ proceedings reflects its understanding that the prohibition on genocide is a fundamental norm of international law from which no state can derogate, and that Bangladesh, as a signatory to the Genocide Convention and as the state bearing the primary burden of the refugee crisis, has a legitimate interest in the enforcement of that norm.

At the domestic constitutional level, the Rohingya crisis raises questions about the constitutional framework for refugee protection in Bangladesh. Bangladesh is not a party to the 1951 Refugee Convention or its 1967 Protocol, which establish the international legal framework for refugee protection. The absence of formal refugee law in Bangladesh means that the legal status of the Rohingya refugees is governed by a patchwork of administrative arrangements rather than a clear domestic legal framework, and that the refugees' ability to exercise rights, including the right to education, the right to work, and the right to move freely within Bangladesh's territory, is extremely limited.

The constitutional question of whether Bangladesh has an obligation, derived from the principles of customary international law or from the general international human rights framework, to provide a minimum standard of protection to persons who have been forced to flee their country to escape persecution and genocide, is one that Bangladesh's courts and constitutional scholars have not fully addressed. The customary law principle of non-refoulement, which prohibits the return of persons to countries where they would face a real risk of persecution or serious harm, is widely regarded as a binding rule of customary international law that applies regardless of whether a state has ratified the Refugee Convention. Whether this principle is enforceable before Bangladesh's courts as part of the domestic legal order, and what constitutional obligations it imposes on Bangladesh's government with respect to the treatment of the Rohingya, are open constitutional questions of significant practical importance.

The Human Rights Watch World Report 2026 notes that Bangladesh continued to advocate for the repatriation of the Rohingya to Myanmar, though conditions for safe, voluntary, and dignified return did not exist. The tension between Bangladesh's advocacy for repatriation and the non-refoulement principle, which prohibits return to conditions of serious danger, is a live constitutional and international legal issue that illustrates the complexity of Bangladesh's international constitutional position.

30.4 Digital Rights, Surveillance, and International Constitutional Standards

The constitutional dimensions of Bangladesh's digital governance framework, including the legislative history from the Information and Communication Technology Act through the Digital Security Act to the current Cyber Security Act and the Telecommunications Amendment Ordinance of 2025, have been analyzed in earlier parts of this textbook in the context of the constitutional right to freedom of expression. In the international constitutional framework, these issues have an additional dimension: they reflect the evolving international standards on digital rights, data protection, and the constitutional constraints on state surveillance that have been developed in international human rights law and in the constitutional jurisprudence of leading constitutional courts around the world.

The UN Special Rapporteur on the Right to Privacy and the UN Special Rapporteur on Freedom of Expression have developed extensive normative guidance on the constitutional constraints on state surveillance, the legal requirements for lawful interception of communications, and the standards for data protection that are required by international human rights law. The evidence that Bangladesh spent approximately US \$190 million on surveillance and spyware between 2015 and 2025, with procurement peaking before national elections in 2018 and 2024, suggests a pattern of surveillance use that is profoundly inconsistent with international constitutional standards on the right to privacy and the conditions under which states can lawfully intercept communications.

The Bangladesh Telecommunications Amendment Ordinance of 2025, which proposes significant reforms to the surveillance framework, represents an acknowledgment that the existing framework does not meet international standards. The assessment that some of the proposed reforms are "in line with international human rights standards on surveillance" is a partial positive, but the qualification is significant: "some" reforms suggests that the ordinance does not fully align the surveillance framework with international standards and that further legislative and constitutional development will be needed.

The international constitutional standard on surveillance, as developed in the UN Special Rapporteur's reports and in the domestic constitutional jurisprudence of courts such as the German Federal Constitutional Court (which developed the constitutional right to informational self-determination), the Supreme Court of India (which recognized privacy as a fundamental constitutional right in the Puttaswamy judgment of 2017), and the European Court of Human Rights (which has developed extensive jurisprudence on Article 8 of the European Convention on Human Rights and state surveillance), requires at minimum that any interference with the right to privacy be (a) provided for by law with sufficient clarity and precision, (b) necessary in a democratic society, meaning that it must pursue a legitimate aim and must be proportionate to that aim, and (c) subject to independent oversight and effective accountability mechanisms.

The domestic constitutional framework for surveillance in Bangladesh, as it has evolved through the successive pieces of digital governance legislation, has consistently fallen short of these requirements. The constitutional reform proposals of 2024 to 2026 offer an opportunity to establish a more robust constitutional framework for the regulation of state surveillance, one that is consistent with the international standards that Bangladesh has committed to respect.

CONCLUSION TO PART SIX: BANGLADESH IN THE INTERNATIONAL CONSTITUTIONAL ORDER

The Constitutional Integration Challenge

The analysis undertaken in this part of the textbook reveals a constitutional order that is deeply engaged with the international legal system at multiple levels, but that has not yet achieved a coherent, systematic, and principled constitutional framework for managing that engagement. Bangladesh's relationship with the international legal order is characterized by selective participation, pragmatic incorporation, creative judicial interpretation, and significant gaps between formal commitment and actual practice.

These characteristics are not unique to Bangladesh; they characterize the international constitutional engagement of most states, particularly states in the Global South that have been shaped by the complex legacies of colonialism, post-colonial state formation, and democratic transition. But they are particularly salient in the Bangladeshi context because Bangladesh is currently in the midst of the most ambitious constitutional reform process in its history, a process that explicitly invokes international constitutional standards and that is being conducted with significant international engagement and oversight.

The central constitutional challenge that this reform process faces, in the international dimension, is the integration challenge: how to build a domestic constitutional framework that genuinely incorporates Bangladesh's international human rights commitments, makes international legal obligations enforceable in domestic courts, provides effective remedies for violations of internationally guaranteed rights, and creates institutional mechanisms that are capable of fulfilling Bangladesh's obligations under the international human rights treaties it has ratified.

This integration challenge cannot be resolved by a single constitutional amendment or a single legislative act. It requires a sustained effort of constitutional construction that unfolds over years and decades: the development of a jurisprudence by Bangladesh's courts that treats international human rights norms as genuine constitutional resources, the training of lawyers and judges in the international dimensions of constitutional law, the education of citizens about their internationally guaranteed rights, the creation of domestic institutions that are genuinely capable of implementing international standards, and the building of a constitutional culture in which international human rights commitments are understood not as external impositions but as expressions of the constitutional values that Bangladesh's people have endorsed in their own name.

Mahmudul Islam's Contribution to the International Constitutional Dimension

Mahmudul Islam's contribution to the international dimension of Bangladesh's constitutional law is less direct than his contribution to the domestic constitutional dimensions analyzed in the preceding parts of this textbook. He was, fundamentally, a constitutional lawyer whose primary focus was the domestic constitutional order of Bangladesh, and his treatment of international law

in his constitutional law book was largely confined to the directly relevant dimensions: the constitutional provisions governing international relations, the status of treaty law in the domestic legal order, and the use of comparative constitutional law from other jurisdictions as an interpretive resource.

But his broader constitutional philosophy, with its commitment to human dignity as the foundational value of constitutional law, its emphasis on the importance of constitutional supremacy and judicial enforcement of constitutional rights, its understanding of constitutional government as a system in which power is genuinely accountable to the people it governs, and its recognition that constitutional law is a living and evolving enterprise rather than a fixed set of rules, provides a powerful framework for thinking about the international dimensions of Bangladesh's constitutional future.

The international constitutional order that Bangladesh is now navigating, with its peremptory norms, its treaty obligations, its international institutional architecture, and its developing global constitutional framework, is precisely the kind of system that Mahmudul Islam's constitutional method is best equipped to analyze: a complex, multilevel system in which technical constitutional doctrine must be understood in the context of its deeper purposes, in which the formal provisions of constitutional texts must be read in light of the foundational values of human dignity and constitutional democracy that animate the entire enterprise of constitutional government, and in which the gap between constitutional promise and constitutional reality must be acknowledged honestly and addressed with the full resources of constitutional law.

The constitutional reform process of 2024 to 2026 is, in the international dimension as in the domestic dimension, an attempt to close that gap. Whether it succeeds will depend not only on the quality of the constitutional proposals being debated but on the depth of the constitutional culture that Bangladesh develops: a culture that treats international human rights standards as genuine commitments, that holds the state accountable for fulfilling those commitments, and that understands the international constitutional framework not as a foreign intrusion into Bangladesh's internal affairs but as a resource for the constitutional development that Bangladesh's citizens deserve.

The international dimension of Mahmudul Islam's constitutional legacy, therefore, is not the specific doctrine he articulated on treaty law or international human rights. It is the constitutional method he exemplified: the combination of technical rigor, comparative breadth, historical consciousness, and normative commitment to human dignity that is the foundation of serious constitutional scholarship and that provides the intellectual tools necessary to understand and advance Bangladesh's engagement with the international constitutional order.

That engagement, as this analysis has sought to demonstrate, is one of the most important and one of the least understood dimensions of Bangladesh's contemporary constitutional development. It deserves the same depth of analytical attention that Mahmudul Islam brought to the domestic constitutional dimensions that formed the primary subject of his life's work. It deserves, in short, the constitutional scholarship that this part of this textbook has sought to provide in his tradition and in his name.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART SIX

The primary sources for this part include Mahmudul Islam's "Constitutional Law of Bangladesh" (3rd ed., Mullick Brothers, 2012), particularly the chapters on the fundamental principles of state policy (Part II), the relationship between Bangladesh's constitution and international law, and the comparative dimensions of constitutional rights. The Constitution of Bangladesh as amended, particularly Articles 25 and 145A, is essential reading alongside the travaux préparatoires of the Constituent Assembly for the constitutional intent behind these provisions.

For the theoretical foundations of the relationship between international and domestic law, the essential readings include: Hans Kelsen, "Principles of International Law" (Rinehart, 1952), particularly the chapters on the monist theory; Heinrich Triepel, "Volkerrecht und Landesrecht" (Hirschfeld, 1899), available in French translation; Ian Brownlie (now updated by James Crawford), "Principles of Public International Law" (Oxford University Press, 9th ed., 2019), particularly the chapters on the relationship between international and domestic law; Malcolm Shaw, "International Law" (Cambridge University Press, 8th ed., 2017), particularly Chapter 4; and Lando Kirchmair, "Rethinking the Relationship between International, EU and National Law: Consent-Based Monism" (Cambridge University Press, 2024).

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For the international human rights treaty framework as it applies to Bangladesh, the essential readings include: the periodic reports submitted by Bangladesh to the Human Rights Committee, the CEDAW Committee, and the Committee Against Torture, together with the Concluding Observations of those bodies; the OHCHR fact-finding report on Bangladesh of February 2025; the Human Rights Watch World Reports on Bangladesh for 2024, 2025, and 2026; and the Amnesty International reports on Bangladesh for the same period.

For the transitional justice dimensions, the essential readings include: the Report of the UN Secretary-General on "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (UN Doc. S/2004/616, 2004); Pablo de Greiff, ed., "The Handbook of Reparations" (Oxford University Press, 2006); Ruti Teitel, "Transitional Justice" (Oxford University Press, 2000); and the reports of the Commission of Inquiry into Enforced Disappearances established by the Bangladesh interim government in August 2024.

For the constitutional reform process of 2024 to 2026, the essential readings include: the Constitutional Reform Commission's report of January 2025; the July National Charter of October 2025 and the Implementation Order of November 2025; the analysis by Muhammad Ekramul Haque and Sumit Bisarya published in ConstitutionNet in December 2025; the comparative analysis by Arafat Hosen Khan published in ConstitutionNet in May 2025; and the CIVICUS assessment of Bangladesh's democratic transition published in July 2025.

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For the Rohingya crisis and its international law dimensions, the essential readings include: the International Court of Justice proceedings in *The Gambia v. Myanmar* (Application of the Convention on the Prevention and Punishment of the Crime of Genocide); the reports of the UN Independent International Fact-Finding Mission on Myanmar; and Human Rights Watch, "Massacre by the River: Burmese Army Crimes Against Humanity in Tula Toli" (2017).

For the digital rights and surveillance dimensions, the essential readings include: the UN Special Rapporteur on the Right to Privacy's reports on surveillance (UN Doc. A/HRC/27/37, 2014, and subsequent reports); the European Court of Human Rights judgment in *Big Brother Watch and Others v. United Kingdom* (Application No. 58170/13, 2021); the Supreme Court of India's judgment in *Justice K.S. Puttaswamy (Retd.) v. Union of India* (2017) 10 SCC 1; and the Tech Global Institute report on surveillance spending in Bangladesh (2025).

End of Part Six. Part Seven of this textbook will examine Bangladesh's constitutional framework for economic governance: the constitutional provisions relating to property, commerce, public finance, and economic rights; the constitutional dimensions of Bangladesh's development model and its relationship with international economic institutions; the constitutional analysis of labor rights, environmental law, and the right to development; and the emerging constitutional framework for corporate accountability and social responsibility in Bangladesh's constitutional order. Mahmudul Islam's treatment of economic and social rights, including his nuanced analysis of the relationship between the directive principles of state policy and the justiciable fundamental rights, will be placed in the context of the extraordinary economic transformation that Bangladesh has undergone since his first edition, and the constitutional questions that transformation has generated.

PART SEVEN

THE CONSTITUTIONAL FRAMEWORK FOR ECONOMIC GOVERNANCE: PROPERTY, DEVELOPMENT, LABOUR, ENVIRONMENT, AND THE CONSTITUTIONAL ECONOMY OF BANGLADESH

A Note on Part Seven

The constitutional analysis undertaken in Parts One through Six of this textbook has been concerned, in the main, with the political and civil dimensions of Bangladesh's constitutional order: the structure of government, the separation of powers, the independence of the judiciary, the enforcement of civil and political rights, and the relationship between Bangladesh's domestic constitutional order and the international legal framework. These are, of course, the subjects that have traditionally occupied the center of constitutional law scholarship, and they are the subjects on which Mahmudul Islam's constitutional work was most directly and most influentially engaged.

But the constitutional dimensions of economic life in Bangladesh are no less important and no less constitutional in their nature. The 1972 Constitution was not merely a document about the structure of government; it was, in the deepest sense, a constitutional economy: a framework that made fundamental choices about the relationship between the state and the market, about the rights of individuals to own and use property, about the obligations of the state to provide for the economic and social welfare of its citizens, about the constitutional status of workers and their organizations, and about the role of the state in directing economic development toward socially just ends. These choices, embedded in the constitutional text and developed through decades of legislative, judicial, and political practice, have shaped the economic life of 170 million people in ways that are as profound and as constitutionally significant as any provision of Part III of the constitution.

This part of the textbook undertakes a comprehensive analysis of Bangladesh's constitutional framework for economic governance. It begins with the foundational constitutional provisions: the treatment of property rights in Articles 42 and 47, the directive principles of state policy in Part II that establish the framework for economic governance, and the fundamental rights provisions that interact with economic life in complex and sometimes contested ways. It proceeds through an examination of the constitutional status of the state economy and public enterprise, the constitutional framework for land and agricultural property, the constitutional dimensions of labor rights, the constitutional economy of the ready-made garment sector, the constitutional framework for environmental protection and the right to development, the constitutional dimensions of anti-corruption law and good governance, and the constitutional framework for Bangladesh's engagement with international economic institutions. Throughout, the analysis is anchored in Mahmudul Islam's constitutional thought, while extending the analysis to encompass the most recent developments in Bangladesh's constitutional economy, including the labor law amendments of 2025, the economic dimensions of the constitutional

reform proposals in the July Charter, and the constitutional consequences of Bangladesh's economic vulnerabilities as they have been exposed by the crises of 2024 to 2026.

CHAPTER THIRTY-ONE: THE CONSTITUTIONAL FOUNDATIONS OF ECONOMIC ORDER IN BANGLADESH

31.1 The Socialist Dimension of the 1972 Constitution

The 1972 Constitution of Bangladesh was drafted in the intellectual and political aftermath of a liberation movement that was inspired not only by nationalism and the demand for self-determination but also by a version of Bengali socialism that shaped the constitutional choices of the founding generation. Understanding the constitutional economy of Bangladesh requires understanding the socialist dimension of the original constitutional vision and the complex journey through which that vision has evolved, been modified, been substantially qualified, and yet in some important respects persists in shaping Bangladesh's constitutional framework for economic governance.

The founding generation of Bangladesh, the political leadership of the Awami League and the constitutional lawyers and intellectuals who gave legal form to the independence movement's aspirations, were products of a political moment in which the socialist alternative to liberal capitalism had genuine intellectual and moral force across the developing world. The experience of colonialism had convinced many in the Global South that the market capitalism of the colonial powers was not a neutral mechanism for the distribution of resources but a system that had historically served the interests of the powerful at the expense of the dispossessed. For Bengal in particular, the experience of colonial extraction, of famine and deprivation in the midst of agricultural abundance, of the concentrated ownership of land and industrial capital in the hands of a small class of proprietors and their colonial protectors, had generated a powerful tradition of left-wing political thought that saw the transformation of the economic order as inseparable from the achievement of genuine political freedom.

The four fundamental principles of the 1972 Constitution, nationalism, socialism, democracy, and secularism, reflected this political moment. The inclusion of socialism as a founding principle was not merely rhetorical; it was intended to signal a substantive constitutional commitment to the transformation of the economic order in the direction of greater equality, greater social justice, and greater state direction of economic life. The specific constitutional provisions that gave content to the socialist commitment included the directive principles of state policy in Part II, the provisions on economic and social rights that were embedded in the directive principles rather than in the justiciable fundamental rights of Part III, and the provisions of Article 42 and Article 47 that addressed the constitutional framework for property rights.

31.2 Property Rights Under the Constitution: Article 42 and Its Limitations

Article 42 of the 1972 Constitution guarantees every citizen the right to acquire, hold, transfer, or otherwise deal with property, subject to such restrictions as may be imposed by law in the public

interest. This is the principal property rights provision in Bangladesh's constitutional framework, and its interpretation has been one of the central questions of Bangladesh's constitutional law, engaging the courts, the legislature, and the constitutional lawyers over the entire period since independence.

The structure of Article 42 reflects the foundational tension in Bangladesh's constitutional economy between the liberal commitment to individual property rights as a dimension of personal freedom and the socialist commitment to state authority over economic life in the service of the collective good. On one hand, the article guarantees a right to property, which is a fundamental right enforced by the High Court Division under Article 102. On the other hand, it expressly contemplates the imposition of restrictions on that right by law "in the public interest," which is a broad and potentially expansive qualification.

The qualification becomes even more significant when read in conjunction with Article 47, which provides that no provision of Part III, including the property rights guarantee of Article 42, shall invalidate any law that (a) imposes restrictions on the acquisition, administration, management, temporary occupation, transfer or disposal of any property on the ground that such law is for the purpose of giving effect to any policy of the state directed toward securing the equal distribution of wealth among citizens or the equitable distribution of financial resources or ensuring the common good, or (b) nationalizes any trade, business, industry or service in the public interest or for the purposes of ensuring the highest efficiency of such trade, business, industry or service.

Article 47 is a remarkable constitutional provision, and it reveals the depth of the founding generation's commitment to using the constitutional framework as an instrument of economic transformation. It effectively exempts from constitutional challenge, under the fundamental rights provisions, any law that the legislature enacts for the purpose of redistributing wealth, nationalizing industry, or promoting the common good as the legislature defines it. The judicial scrutiny of such laws under the property rights provision is therefore substantially limited: a court cannot strike down a nationalization law or a land reform law on the ground that it violates the right to property, provided that the law pursues one of the stated objectives of Article 47.

Mahmudul Islam's analysis of Articles 42 and 47 in his constitutional law book is characteristically careful and historically grounded. He traces the intellectual roots of Article 47 in the Indian constitutional tradition, particularly in the Forty-Second Amendment to the Indian Constitution of 1976, which placed the right to property outside Part III and reduced it to a constitutional right under Article 300A, which cannot be enforced through the fundamental rights jurisdiction of the courts. He notes the parallels with the Irish Constitution's provisions on private property and the public interest, which similarly balance the individual right to own property against the social function of property. And he situates Article 47 within the broader constitutional economy of the 1972 Constitution, understanding it as the constitutional expression of the founding generation's commitment to economic redistribution as a constitutional value.

But Islam is also alert to the risks of an interpretation of Articles 42 and 47 that effectively eliminates meaningful constitutional protection for property rights. He notes that property rights

are not merely economic interests of the wealthy; they are the constitutional protection for the small farmer, the petty trader, the homeowner, and the ordinary citizen against arbitrary state appropriation. A constitutional framework that allows the legislature to override property rights under the broad and potentially elastic rubric of "the common good" or "equal distribution of wealth" without meaningful judicial oversight creates the conditions for the politically motivated expropriation of property, for the use of economic regulation as an instrument of political patronage and political punishment, and for the systematic erosion of the economic security of ordinary citizens.

This concern has been amply vindicated by Bangladesh's constitutional history. The Vested Property Acts, discussed in greater detail below, are the most egregious example of how the constitutional authority to limit property rights in the public interest was used to systematically expropriate the property of minority communities, particularly the Hindu minority, on a massive scale, for reasons that had nothing to do with economic redistribution or the common good and everything to do with political and religious discrimination.

31.3 The Vested Property Controversy: Constitutional Discrimination Through Economic Law

The Vested Property controversy is one of the most constitutionally shameful episodes in Bangladesh's legal history, and it illustrates with painful clarity the ways in which the constitutional framework for property rights can be weaponized against vulnerable minorities when the political will to protect those minorities is absent.

The origin of the Vested Property problem lies in the Enemy Property (Custody and Registration) Act of 1965, enacted during the Pakistan era, which allowed the government to take custody of property belonging to persons deemed to be enemies of Pakistan, a category that was applied primarily to Hindu citizens who had property interests on the Indian side of the partition border. When Bangladesh became independent, the 1974 Vested and Non-Resident Properties (Administration) Act continued this framework, treating the properties of Hindu citizens who had fled to India as "vested" in the state and subjecting them to government management and eventual redistribution. Successive amendments and administrative actions extended the reach of the vested property regime, and its implementation became a mechanism for the systematic dispossession of Hindu landowners by politically connected individuals who used the vested property laws to lay claim to property that had been occupied by its Hindu owners for generations.

The constitutional dimensions of the Vested Property controversy are profound and multifaceted. At the level of property rights, the vested property laws represent a use of the constitutional authority to restrict property rights that is directly contrary to the purposes that authority was designed to serve: instead of redistributing property from the wealthy to the poor in the service of social justice, the vested property regime redistributed property from a vulnerable minority community to politically well-connected individuals who had the power to take advantage of an unjust legal framework. At the level of non-discrimination, the vested property laws were explicitly or functionally discriminatory on the basis of religion and ethnicity, in plain

contradiction of the constitutional guarantee in Article 28 against discrimination on grounds of religion, race, caste, sex, or place of birth.

The 2001 Vested Properties Return Act, which was enacted during the BNP government and amended in 2011 under the Awami League, attempted to address the vested property problem by providing a mechanism for the return of wrongfully vested properties to their original owners or their heirs. The implementation of this legislation has been, as the Freedom House report notes, "uneven," a characterization that understates the systematic failure of the state to use the return mechanism effectively. As of the mid-2020s, the overwhelming majority of claims filed under the return mechanism remained unresolved, and the actual restoration of property to Hindu families displaced by the vested property system has been minimal.

Mahmudul Islam's analysis of the constitutional implications of the vested property laws places them squarely within the framework of the non-discrimination provisions of Article 28, the property rights guarantee of Article 42, and the broader constitutional commitment to the equal protection of all citizens' rights regardless of their religious identity. His analysis provides a principled constitutional basis for the full implementation of the return mechanism, for the provision of compensation to those whose properties cannot be physically returned, and for the constitutional accountability of officials who have used the vested property system for private gain.

31.4 The Directive Principles of State Policy and Economic Governance

Part II of the 1972 Constitution, titled "Fundamental Principles of State Policy," contains the most extensive statement of the constitutional framework for economic governance in Bangladesh. These principles, enumerated in Articles 8 through 25, include the commitment to the equal distribution of wealth and the means of production (Article 13), the commitment to securing for every citizen the basic necessities of life including food, clothing, shelter, education, and medical care (Article 15), the commitment to providing employment for all citizens (Article 20), the commitment to free and compulsory education (Article 17), the commitment to protecting the interests of workers and employees (Article 14), and the commitment to environmental protection (Article 18A, introduced by the Fifteenth Amendment of 2011).

The constitutional status of these directive principles, and their relationship to the justiciable fundamental rights of Part III, is one of the central jurisprudential questions of Bangladesh's constitutional law, and it is a question on which Mahmudul Islam's analysis has been particularly influential. The directive principles, unlike the fundamental rights of Part III, are not directly enforceable in court: Article 8(2) expressly provides that the principles "shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall be the basis of the work of the State and of its citizens, but shall not be judicially enforceable." This is a significant constitutional statement about the character of the directive principles: they are constitutional norms, but they are norms of a different character from the justiciable fundamental rights.

Mahmudul Islam's analysis of the constitutional significance of this distinction is one of the most important and most carefully argued sections of his constitutional law book. He rejects what might be called the dismissive interpretation of the directive principles: the view that because the directive principles are not judicially enforceable, they are of no real constitutional significance and can safely be disregarded by legislators, executive officials, and courts. This interpretation, which has sometimes been given implicit support by the courts' reluctance to engage seriously with the directive principles as constitutional norms, fundamentally misunderstands the constitutional role of the Part II principles.

Islam argues, rather, that the directive principles play three distinct and important constitutional roles. First, they function as interpretive guides: when a constitutional provision or a statute is ambiguous, the directive principles provide constitutional context that should inform the interpretation of the ambiguous provision. A court that ignores the directive principles in the interpretation of ambiguous fundamental rights provisions is not interpreting the constitution as a whole but is reading Part III in isolation from the constitutional framework within which it is embedded. Second, the directive principles function as legislative obligations: while they cannot be enforced by judicial command, they create genuine constitutional obligations on the legislature to move, over time, toward the constitutional goals they articulate. A legislature that systematically ignores the directive principles, that enacts legislation that is plainly contrary to the constitutional values they express, is acting unconstitutionally in spirit even if not in a formally judicially reviewable way. Third, the directive principles function as constitutional standards of accountability: they provide the normative framework within which citizens, civil society, and the political community can hold the government constitutionally accountable for its economic and social governance choices.

This three-part analysis is sophisticated and important, and it has been influential in shaping the way Bangladesh's courts have approached the relationship between Parts II and III of the constitution. The interpretive approach, in particular, has allowed courts to draw on the directive principles in expanding the content of justiciable fundamental rights, most prominently through the interpretive expansion of the right to life in Article 32 to encompass dimensions of positive welfare that are more directly associated with the directive principle obligations than with the classic liberal understanding of the right to life as a protection against arbitrary killing.

The Constitutional Reform Commission's report of January 2025 recommended the unification of Part II and Part III into a single, comprehensive, and fully enforceable Bill of Rights, titled "Fundamental Rights and Freedoms." This recommendation, if implemented, would represent a fundamental constitutional transformation in the status of economic, social, and cultural rights in Bangladesh's constitutional framework. Instead of being aspirational directive principles, enforceable only through political accountability and interpretive use, the rights to work, to education, to healthcare, to food, and to an adequate standard of living would become fully justiciable rights, enforceable through constitutional litigation in the same way as the civil and political rights of Part III.

The July Charter of 2025, however, stepped back from the full version of this recommendation. Rather than fully unifying Parts II and III, the Charter includes only "a broadly worded recommendation for the state to take certain measures" relating to economic and social rights,

falling short of full justiciability. This more cautious position reflects genuine constitutional concerns about the institutional capacity of Bangladesh's courts to adjudicate complex economic and social rights claims, about the fiscal and administrative implications of making positive welfare rights fully justiciable, and about the political resistance from those who fear that full justiciability of social rights would lead to a judicially directed economic transformation that bypasses the democratic process.

These are legitimate concerns, and they reflect a global debate in constitutional theory about the appropriate constitutional status of economic and social rights. The experience of South Africa, which adopted a fully justiciable set of socioeconomic rights in the 1996 Constitution, and whose Constitutional Court has developed an extensive jurisprudence on the content and limitations of those rights, provides the most fully developed example of what full justiciability of social rights looks like in practice. The South African experience is instructive for Bangladesh: it demonstrates both the potential of justiciable social rights to advance the constitutional commitment to social justice and the significant institutional challenges of adjudicating rights that depend on the allocation of scarce public resources.

CHAPTER THIRTY-TWO: LAND, AGRICULTURE, AND THE CONSTITUTIONAL ECONOMY OF THE COUNTRYSIDE

32.1 Land as the Foundation of Economic Life

For a country like Bangladesh, where the overwhelming majority of the population lived in rural areas for most of its post-independence history and where agricultural land has historically been the primary form of productive wealth for the mass of the population, the constitutional framework for land and agricultural property is not a peripheral legal technicality but a central dimension of the constitutional economy. The distribution of land, the security of land tenure, the regulation of landlord-tenant relations, and the mechanisms for land reform are issues that have directly shaped the economic lives of tens of millions of Bangladeshis, and they are issues that the constitutional framework for property rights is designed, at least in aspiration, to address.

The inheritance of land relations that Bangladesh carried from the colonial period was deeply unjust. The Permanent Settlement of 1793, through which the British East India Company transformed the Zamindars, the traditional collectors of land revenue, into freehold landlords with absolute property rights over their tenanted lands, created a system of concentrated landownership that extracted enormous surplus from the peasantry while providing those peasants with no security of tenure and no mechanism for sharing in the productivity of the land they cultivated. The Bengal tenancy legislation of the nineteenth and early twentieth centuries provided some limited protections for tenants, but it did not fundamentally alter the structural inequalities of the Zamindar system.

The East Pakistan State Acquisition and Tenancy Act of 1950, which abolished the Zamindari system and vested all land directly in the state, which then distributed it to the actual cultivators, represented the most significant land reform in Bengal's history and an important constitutional

milestone in the development of Bangladesh's agrarian economy. The 1950 Act established the principle that land should belong to those who cultivate it, and it abolished the extractive landlord-tenant relationship that had impoverished the Bengal peasantry for more than a century. This act was the foundational legislation of the constitutional economy of Bangladesh's countryside, and its implementation shaped the patterns of land distribution that still characterize rural Bangladesh.

The constitutional framework for land in independent Bangladesh has been shaped by the tension between three competing principles: the right of individual citizens to own and use land as a form of private property protected by Article 42; the directive principle commitment to the equal distribution of wealth, including land, expressed in Article 13; and the pragmatic recognition, rooted in the difficult experience of post-independence land administration, that land ownership in Bangladesh is characterized by extreme fragmentation, disputed boundaries, corruption in land records, and endemic litigation that provides enormous economic rents to lawyers, judges, and officials while providing little security to ordinary landholders.

32.2 Land Administration and Constitutional Governance: The Problem of the Land Registry

The land registry system in Bangladesh is one of the most significant sources of constitutional failure in the economic governance of the country. The accurate, accessible, and tamper-proof registration of land rights is a fundamental precondition for the enjoyment of the constitutional right to property: if a citizen cannot rely on the registration system to establish and protect their ownership claim, the constitutional right to own property is substantially hollow.

Bangladesh's land registry system, which is administered through the Deputy Commissioner's offices and the sub-registrar system, has been characterized by systematic corruption, manipulation of records, deliberate obstruction of legitimate registration, and the exploitation of procedural complexity as an instrument for the extraction of bribes from ordinary landholders. The Constitutional Reform Commission's report of January 2025 identifies the land registry system as one of the priority areas for institutional reform, noting that the corruption and inefficiency of the system are a major source of economic insecurity for rural households and a significant constitutional problem.

The constitutional dimensions of land registry reform involve both the property rights guarantee of Article 42 and the directive principle commitment to the welfare of the rural poor expressed in Part II. A government that maintains a land registry system characterized by systematic corruption is not merely failing to provide an administrative service efficiently; it is failing to discharge a constitutional obligation to protect the property rights of its citizens. And because the victims of the corrupt land registry system are disproportionately the poorest and least powerful rural citizens, who lack the political connections and the financial resources to navigate a system that has been captured by those with the power to manipulate it, the land registry failure is also a constitutional failure of the equality and non-discrimination commitments of Part III.

The technological dimension of land registry reform has received significant attention in Bangladesh's development policy discussions, with proposals for the digitization of land records,

the establishment of online land registration systems, and the use of geographic information systems (GIS) to establish accurate land boundaries. These technological reforms, while important, do not by themselves address the constitutional problem of land registry corruption, which is fundamentally a problem of governance accountability rather than administrative technology. A digitized land registry that is subject to the same corrupt practices that characterize the paper-based system will not provide meaningfully better protection for the constitutional property rights of ordinary citizens.

32.3 The Chittagong Hill Tracts: Constitutional Land Rights and Ethnic Discrimination

The most serious and the most constitutionally complex of Bangladesh's land rights problems is the situation in the Chittagong Hill Tracts (CHT), the mountainous southeastern region of Bangladesh that is home to thirteen distinct indigenous peoples collectively referred to as the Jumma people. The constitutional dimensions of the CHT situation engage with issues of land rights, indigenous peoples' rights, ethnic self-determination, and the constitutional obligations of the state toward minority communities that together constitute one of the most challenging and most underexplored areas of Bangladesh's constitutional law.

The CHT was historically administered under a special regime: the Regulation of 1900, a colonial instrument that provided for a degree of territorial autonomy and protected the customary land rights of the hill peoples against the incursion of settlers from the plains. This special regime was disrupted after independence, when a government policy of encouraging Bengali settlement in the CHT, combined with the construction of the Kaptai Dam in the 1960s (which submerged a large portion of the most productive agricultural land in the region and displaced approximately 100,000 Kaptai Chakma people), fundamentally altered the demographic and economic situation of the CHT.

The armed conflict between the Jumma resistance organization, the Parbatya Chattagram Jana Samhati Samiti (PCJSS, also known as JSS), and the Bangladesh Army that began in the 1970s and lasted until the Peace Accord of 1997 was rooted in the land rights conflict between the indigenous peoples of the CHT and Bengali settlers backed by the state. The 1997 CHT Peace Accord, signed between the PCJSS and the Hasina government, was a significant constitutional achievement: it provided for a degree of regional self-government through the three Hill District Councils and the CHT Regional Council, and it committed the government to protecting the customary land rights of the indigenous communities and addressing the land disputes created by the settlement policy.

The implementation of the 1997 Accord has been profoundly inadequate, and the land rights situation of the CHT's indigenous peoples remains deeply constitutionally problematic. The Land Commission established under the Accord to address land disputes has functioned in a severely constrained and ineffective manner. Bengali settlers continue to occupy lands claimed by indigenous communities, with active or passive support from elements of the military and the civil administration. As the Freedom House report notes, indigenous people in the CHT "remain subject to physical attacks, property destruction, land grabs by Bengali settlers, occasional abuses by security forces, and social discrimination."

The constitutional dimensions of this situation are stark. The property rights guarantee of Article 42 applies to indigenous peoples' customary land rights no less than to the property rights of Bengali landholders. The non-discrimination provisions of Article 28, which prohibit discrimination on the basis of race and place of birth, are directly implicated by policies and practices that systematically disadvantage the indigenous peoples of the CHT in their access to land and to state protection of their property rights. And the constitutional commitment to the welfare of all citizens, expressed in the directive principles, requires that the state take active steps to protect the most vulnerable communities from the predatory appropriation of their lands.

The constitutional reform process of 2024 to 2026 has addressed the CHT situation inadequately. The July Charter's proposals on fundamental rights, while expanding some protections, do not specifically address the constitutional status of indigenous peoples' land rights or the implementation failures of the 1997 Peace Accord. The Constitutional Reform Commission's report of January 2025 noted the need for improved constitutional protection of minority and indigenous peoples' rights, but the specific mechanism for protecting CHT indigenous land rights against the continuing depredations of the settlement policy has not been adequately articulated.

CHAPTER THIRTY-THREE: THE CONSTITUTIONAL FRAMEWORK FOR LABOUR RIGHTS

33.1 Labour Rights as Constitutional Rights: The Foundational Framework

The constitutional framework for labour rights in Bangladesh is one of the most practically important and most thoroughly contested areas of Bangladesh's constitutional law. It involves the intersection of fundamental rights guarantees, directive principle obligations, the specific statutory framework of labour legislation, and the evolving international standards of the International Labour Organization, all operating in the context of an economy in which the labour force is enormous, poorly organized, and historically subject to severe exploitation in the service of economic growth models that have privileged the interests of capital over those of labour.

The constitutional provisions most directly relevant to labour rights are Article 34, which prohibits forced labour and declares all forms of forced and compulsory labour a punishable offence; Article 38, which guarantees every citizen the right of freedom of association and the right to form and join associations and unions; Article 14, which declares it a fundamental responsibility of the state to liberate the toiling masses from all forms of exploitation; and Article 15, which establishes as a fundamental principle of state policy that the state shall endeavour to provide the basic necessities of life to its citizens and shall ensure work as a right of every citizen able to work, remunerated at a just wage.

The most important of these provisions for the practical constitutional analysis of labour rights is Article 38, the right of freedom of association and the right to join trade unions. Trade union rights are the foundational enabling rights of labour: they are the constitutional mechanism through which workers collectively exercise bargaining power against the market power of

employers and the political power of a state that has often aligned itself with capital against labour. Without effective trade union rights, the substantive labour protections that the constitutional framework promises, just wages, safe working conditions, protection against arbitrary dismissal, the right to collectively bargain the terms and conditions of employment, are reduced to paper promises that have little practical force.

The gap between the constitutional guarantee of trade union rights in Article 38 and the practical reality of trade union activity in Bangladesh has been one of the most persistent and most serious constitutional failures of the post-independence period. The Bangladesh Labour Act of 2006, as amended, places significant restrictions on the formation and registration of trade unions. The registration process is subject to administrative discretion that has historically been used to delay or deny registration to unions in industries where the government or politically connected employers prefer to keep workers unorganized. The minimum membership threshold for union formation, which the 2025 Labour Act Amendment reformed from a percentage-based rule to a fixed-number approach, has been a structural barrier to union formation in medium and large factories.

The constitutional significance of the 2025 Labour Act Amendment, analyzed in the context of the financial and legal reform program of the interim government, is substantial. The Financial Express analysis of January 2026 provides a careful economic assessment: the amendment's shift from a percentage-based to a fixed-number approach to union membership thresholds reduces the fixed cost of collective action, shifts the bargaining position of workers upward, and raises the expected costs of anti-union behaviour through enhanced penalties for unfair labour practices. These are not merely technical labour law changes; they are constitutional reforms in the sense that they move the actual practice of trade union rights closer to the constitutional guarantee of Article 38.

33.2 The Bangladesh Labour Act and Its Constitutional Architecture

The Bangladesh Labour Act of 2006 is the primary statutory framework for labour rights in Bangladesh, and its constitutional architecture reflects the complex and often contradictory demands that the constitutional framework for labour rights imposes on the legislature. The Act consolidates and replaces a large number of earlier statutes, some dating back to the colonial period, and it provides the regulatory framework for employment contracts, wages, working conditions, occupational health and safety, termination and severance, trade union registration and collective bargaining, industrial disputes, and labour courts.

The constitutional validity of the Bangladesh Labour Act has been the subject of significant academic and legal debate, though less of formal constitutional litigation than the significance of the issues might suggest. The debate centres on several constitutional tensions: the tension between the protection of workers' rights under Articles 14, 34, and 38 and the limitations that the Act imposes on those rights; the tension between the labour protections of the Act and the property rights of employers under Article 42; the tension between the universal application of labour protections and the systematic exclusion of large categories of workers, particularly domestic workers, agricultural workers, and workers in export processing zones, from the full protections of the Act.

The 2025 Bangladesh Labour Act Amendment is the most significant reform of the Act since the 2013 post-Rana Plaza amendments. The amendment is notable for several constitutional achievements. First, as the Bangladesh Law Digest analysis notes, it extends the legal definition of "worker" to include seafarers, agricultural workers, and domestic workers, who had previously been excluded from the Act's protections. This extension of coverage is constitutionally important: it brings the Act's protections closer to the constitutional mandate of Article 14, which declares the liberation of "the toiling masses" from exploitation a fundamental state responsibility, without limiting that responsibility to the toiling masses who happen to be employed in the formal industrial sector.

Second, the 2025 amendment introduces a specific definition of "forced or compulsory labour" and explicitly prohibits and criminalizes it, in implementation of the constitutional prohibition in Article 34 and in fulfillment of Bangladesh's obligations under the two fundamental ILO Conventions on forced labour (Conventions 29 and 105). The fact that, prior to this amendment, the Bangladesh Labour Act lacked specific provisions on forced labour despite the constitutional prohibition and the ILO treaty obligations is itself a constitutional failure: it meant that the constitutional prohibition existed as a formal norm but lacked the specific statutory implementation necessary to give it practical effect.

Third, the 2025 amendment raises the penalties for unfair labour practices, including penalties for interference with trade union formation and activities. This enhancement of penalties is constitutionally significant because it strengthens the enforcement mechanism for the trade union rights guaranteed by Article 38, creating a stronger deterrent against the employer behaviour that has historically been the most serious practical obstacle to the effective exercise of those rights.

The Economic Reading of Bangladesh's 2025 Ordinances, published in the Financial Express in January 2026, places the labour law amendments in a broader economic and constitutional context. The analysis connects the labour reforms explicitly to Bangladesh's access to the EU's Everything But Arms (EBA) trade preference scheme and the conditions for qualifying for GSP-plus status after 2029. This connection is constitutionally significant because it illustrates one of the mechanisms through which international economic arrangements create incentives for the domestic constitutional enforcement of labour rights: the prospect of losing duty-free access to a major export market if labour rights standards are not met provides a powerful economic motivation for constitutional compliance that supplements, and in some contexts may be more immediately effective than, the purely constitutional mechanisms of rights enforcement.

33.3 The Export Processing Zones and the Constitutional Labour Rights Exclusion

One of the most constitutionally problematic dimensions of Bangladesh's labour rights framework has been the systematic exclusion of Export Processing Zone (EPZ) workers from the full protections of the Bangladesh Labour Act. The EPZs, established under the Bangladesh Export Processing Zones Authority Act of 1980, are designated industrial areas designed to attract foreign direct investment through the provision of fiscal incentives, simplified administrative procedures, and, crucially, a separate and significantly less protective labour regime.

The constitutional problem with the EPZ labour regime is fundamental: it creates a two-tier system of labour rights in which the constitutional guarantees of Articles 14, 34, and 38 apply to some workers but are systematically limited for others, based not on any constitutionally relevant distinction but purely on the geographical location of their workplace. A garment worker employed in an EPZ has systematically fewer labour rights, particularly with respect to trade union formation and collective bargaining, than an identical worker employed in a factory outside the EPZ. This differential treatment raises serious constitutional questions under Article 27 (equality before the law) and Article 28 (non-discrimination).

The EPZ Labour Act of 2019 was an attempt to address the most serious constitutional deficiencies of the EPZ labour regime, introducing worker welfare associations as a substitute for trade unions. But these associations have been widely criticized by labour rights organizations and the ILO as an inadequate substitute for genuine trade unions, lacking the independence, the authority, and the legal protections that are necessary for effective collective representation of workers' interests.

The 2023 amendment extending the Bangladesh Labour Act to Special Economic Zones (SEZs), as noted in the Bangladesh government's National Action Plan on Labour, represents a further step toward the constitutional normalization of labour rights across different categories of industrial location. But the fundamental constitutional problem of the EPZ labour rights exclusion remains inadequately addressed, and the constitutional reform process of 2024 to 2026 has not yet provided a definitive solution.

33.4 The Minimum Wage and Constitutional Justice

The constitutional dimension of the minimum wage is particularly significant in Bangladesh's economic context, where the garment industry employs several million workers, the majority of them women, at wage levels that have consistently been among the lowest in the global garment industry despite generating the overwhelming majority of Bangladesh's foreign exchange earnings.

The constitutional basis for the minimum wage in Bangladesh is found in the directive principle of Article 15(d), which establishes the state's obligation to ensure the provision of the basic necessities of life, and in the broader constitutional commitment to social justice expressed throughout Part II. These provisions, read together, establish a constitutional standard against which the minimum wage can be assessed: a minimum wage that is set at a level insufficient to provide workers and their families with the basic necessities of life is not merely an inadequate economic policy but a constitutional failure.

The minimum wage setting process in Bangladesh is governed by the Bangladesh Labour Act and implemented through the Minimum Wage Board, which conducts periodic reviews of wage levels in different sectors. The minimum wage for garment workers was last revised in 2023, in the context of significant worker unrest over wages that many argued were insufficient to meet basic living costs in the face of rising inflation. The 2023 wage revision was preceded by protests in which workers were killed by security forces, a dimension of the wage controversy that adds a civil and political rights dimension to what is already a complex constitutional issue.

The constitutional analysis of the minimum wage in Bangladesh requires engaging with both the substantive standard (is the wage constitutionally adequate?) and the procedural standard (is the process by which the wage is determined constitutionally fair?). On the substantive standard, the relationship between the minimum wage and the cost of a basic basket of necessities provides a constitutional benchmark: if the minimum wage does not enable a full-time worker to meet the basic necessities enumerated in Article 15, the wage falls below the constitutional floor established by the directive principles. On the procedural standard, a minimum wage determination process from which genuine worker representation is systematically excluded, and in which the political pressure of employers and the government's concern for the competitiveness of the garment industry override the constitutional rights of workers to adequate wages, is constitutionally deficient.

CHAPTER THIRTY-FOUR: RANA PLAZA, CORPORATE ACCOUNTABILITY, AND THE CONSTITUTIONAL ECONOMY OF THE GARMENT SECTOR

34.1 Rana Plaza as Constitutional Catastrophe

The collapse of the Rana Plaza building in Savar, Dhaka, on April 24, 2013, in which at least 1,138 people were killed and more than 2,500 were injured, was one of the most devastating industrial disasters in modern history. It was also, and this dimension of the event has received insufficient constitutional analysis, a constitutional catastrophe: a failure of the constitutional order at multiple levels simultaneously that exposed the full depth of the gap between Bangladesh's constitutional promises to its workers and the constitutional reality of their lives.

Understanding Rana Plaza as a constitutional event requires tracing the constitutional failures that made it possible. At the level of property rights and regulatory governance, the Rana Plaza building was constructed with fundamental structural violations: additional floors were added without planning permission, in breach of building regulations, in a manner that was known to regulatory authorities who took no effective action. The failure of the building inspection and regulatory enforcement system was not an isolated failure of individual incompetence but a systemic constitutional failure: the regulatory authority of the state, which derives its constitutional legitimacy from the duty of the state to protect the lives and safety of its citizens, had been captured by the economic interests of the property and garment industries.

At the level of labour rights, the constitutional failure of Rana Plaza was equally fundamental. Workers employed in the five factories in the Rana Plaza building had observed cracks in the building structure the day before the collapse and had raised concerns about the safety of the building. Factory managers, under pressure from buyers and from the economic imperatives of a just-in-time production system, ordered workers to return to the building despite these concerns. The workers who entered the building on the morning of April 24, 2013, did so under effective economic coercion: they entered knowing there was a risk, because they feared that the loss of wages and the potential for dismissal if they refused to work were risks they could not afford to take. This is economic compulsion that is constitutionally indistinguishable from the forced labour prohibited by Article 34.

At the level of accountability and the right to an effective remedy, the constitutional failure of Rana Plaza has been most prolonged and most damaging. As the Amnesty International report of May 2024 documents, more than eleven years after the disaster, the compensation cases filed by BLAST and other organizations on behalf of Rana Plaza victims against the government and the factory owners "have not been resolved." The constitutional right to an effective remedy for constitutional violations, which is enshrined in Article 102 and which the directive principle commitment to social justice reinforces, has been systematically denied to the victims of the worst industrial disaster in Bangladesh's history. A survivor quoted by Amnesty International, Sokina, described her experience with devastating simplicity: "It has been over eleven years and we have still not received our rightful compensation. The owner of the factory is roaming scot-free."

34.2 The International Accord and Constitutional Implications

The Bangladesh Accord on Fire and Building Safety, signed in the immediate aftermath of the Rana Plaza disaster by over 260 global brands and two global trade union federations, is one of the most significant examples of transnational private regulatory governance in the history of the garment industry, and it has constitutional dimensions that are often overlooked in discussions that focus primarily on its economic and labour relations aspects.

The Accord is a legally binding agreement, governed by Dutch arbitration law, that commits signatory brands to participate in factory safety inspections, to ensure that factories in their supply chains remediate identified safety hazards, to contribute financially to the remediation process, and to maintain purchasing relationships with factories only on the condition of safety compliance. The Accord's creation of binding obligations on global brands, enforced through international arbitration, represents the introduction of a form of private constitutional governance into the Bangladesh garment sector: a framework of legally enforceable obligations that substitutes, at least partially, for the inadequate state regulatory framework that failed so catastrophically at Rana Plaza.

The constitutional implications of this private governance framework are complex and significant. On one level, the success of the Accord in dramatically improving factory safety conditions in Bangladesh, as extensively documented in academic studies and the Accord's own reporting, represents a form of de facto constitutional enforcement of the workers' constitutional rights to safe working conditions, enforced not through the mechanisms of Bangladesh's constitutional system but through the mechanisms of transnational private ordering. This is constitutionally significant because it illustrates the degree to which the constitutional promises of Part III and the constitutional economy of Part II have been effectively outsourced to private international governance mechanisms when the domestic constitutional system has failed.

On another level, the reliance on private transnational governance for the enforcement of constitutional labour rights raises fundamental constitutional questions about democratic accountability, state sovereignty, and the constitutional role of the legislature and the executive in setting the conditions of work. A regulatory framework for factory safety that is effectively set by a private agreement between global brands and global trade unions, governed by Dutch law and enforced through international arbitration, is not a constitutional framework: it has no

democratic legitimacy in the sense of having been authorized by Bangladesh's people through their constitutional representatives, it is not subject to the constitutional accountability mechanisms that apply to state regulatory action, and it is potentially vulnerable to withdrawal or renegotiation at the initiative of the private parties who created it.

The Clean Clothes Campaign's April 2025 report, marking twelve years since the Rana Plaza collapse, captures the continuing tension with admirable clarity: "Twelve years on, factories in Bangladesh are much safer, but poverty wages and lack of freedom of association prevail." The safety achievements of the Accord have been real and significant, but they have been confined to the specific dimension of factory building safety, leaving untouched the deeper constitutional failures of the garment sector: the poverty wages that leave workers unable to meet their constitutional right to basic necessities, and the systematic suppression of trade union rights that leaves workers without the collective power necessary to assert their constitutional rights against employer resistance.

34.3 Corporate Constitutional Accountability: Business and Human Rights

The conceptual framework of business and human rights, which has developed rapidly since the endorsement by the UN Human Rights Council of the Guiding Principles on Business and Human Rights (the Ruggie Principles) in 2011, provides an important additional dimension for the constitutional analysis of corporate accountability in Bangladesh's garment sector.

The Ruggie framework establishes three pillars: the state duty to protect human rights against violations by business enterprises, the corporate responsibility to respect human rights, and the need for access to remedy for victims of business-related human rights abuses. For Bangladesh, each of these pillars reveals a constitutional dimension.

The state duty to protect human rights against corporate violations is a constitutional obligation derived from the fundamental rights provisions of Part III, read together with the directive principle obligations of Part II. The state's failure to regulate the garment industry effectively, its failure to enforce building and fire safety standards, its failure to protect trade union rights against employer suppression, and its failure to ensure that compensation for industrial accidents is promptly and adequately paid, are all failures of the state's constitutional duty to protect the rights of its citizens against corporate abuse.

The corporate responsibility to respect human rights, while not in itself a constitutional provision (corporations are not directly bound by Bangladesh's constitutional rights provisions in the way that the state is), has increasingly been given constitutional resonance through the legal framework for corporate governance and through the evolving doctrine of corporate constitutional obligations. The Bangladesh Companies Act and the Securities and Exchange Commission rules impose obligations on companies with respect to disclosure, governance, and stakeholder accountability that can be understood as giving partial effect to the constitutional commitment to corporate responsibility.

The most significant recent development in the business and human rights framework is the introduction of mandatory human rights due diligence legislation by several European states,

most notably Germany (the Supply Chain Act of 2023) and France (the Corporate Duty of Vigilance Law of 2017), and at the EU level through the Corporate Sustainability Due Diligence Directive adopted in 2024. These legislative instruments impose legal obligations on large companies to identify, prevent, and address human rights violations in their global supply chains, including in their Bangladesh garment supply chains. The complaint filed by the European Center for Constitutional and Human Rights and others against European companies sourcing from Bangladesh on the basis of the German Supply Chain Act, mentioned in the Business and Human Rights Resource Centre's reporting, illustrates how these European legal instruments are beginning to create a form of extraterritorial corporate accountability for human rights violations in Bangladesh's garment sector.

The constitutional implications of these extraterritorial due diligence obligations for Bangladesh are significant. They represent a form of constitutional pressure on Bangladesh's domestic governance from the outside: European legal obligations on their own companies create market incentives for improved labour rights compliance in Bangladesh's garment factories, which in turn creates pressure on Bangladesh's government to strengthen its domestic constitutional enforcement of labour rights in order to maintain export market access.

CHAPTER THIRTY-FIVE: ENVIRONMENTAL CONSTITUTIONALISM AND THE RIGHT TO DEVELOPMENT

35.1 The Constitutional Recognition of Environmental Rights

The constitutional framework for environmental protection in Bangladesh has developed through a combination of constitutional text, judicial interpretation, and legislative action that has progressively elevated environmental concerns from the status of a peripheral regulatory matter to the status of a constitutional right, rooted in the right to life, the newly inserted Article 18A, and the broader constitutional commitment to the welfare of the people.

The most direct constitutional provision on the environment is Article 18A, inserted by the Fifteenth Amendment of 2011, which provides that "the State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wildlife for the present and future generations." This provision, while cast in terms of a directive principle obligation (the state "shall endeavour") rather than a justiciable right, represents the formal constitutional recognition that environmental protection is a constitutional value, not merely a regulatory preference.

The constitutional development of environmental rights in Bangladesh before Article 18A, and the continuing constitutional development beyond that provision, has been driven primarily by the judicial expansion of the right to life in Article 32. The logic is straightforward and powerful: if the constitutional right to life protects not merely biological existence but the conditions for a dignified human existence, and if those conditions include the availability of clean air, clean water, and a habitable environment, then the state's failure to protect the environment from degradation is a constitutional violation of the right to life.

This judicial reasoning, pioneered in Bangladesh by the Mohiuddin Farooque cases of the 1990s and 2000s, in which the Forum for Environmental Action in South Asia (FESA) brought public interest litigation cases challenging environmental degradation caused by industrial pollution, the destruction of wetlands, and the mismanagement of natural resources, has been instrumental in transforming Bangladesh's constitutional jurisprudence on environmental rights. The Mohiuddin Farooque cases established, for the first time in Bangladesh, that environmental issues could be the subject of public interest constitutional litigation, that an organization could have standing to bring environmental constitutional claims on behalf of the wider public even without a specific individual who could demonstrate personal harm, and that the courts had jurisdiction to require the government to take specific protective action to prevent environmental harm.

Mahmudul Islam's analysis of the Mohiuddin Farooque cases and of environmental constitutional rights more broadly is one of the most important contributions of his constitutional law book to the development of Bangladesh's constitutional jurisprudence. He traces the cases carefully, noting the constitutional innovations involved in the standing doctrine, the expansion of the right to life, and the use of the writ jurisdiction under Article 102 to enforce environmental obligations against the state and against private actors enabled by state failure. He also notes the limitations and the risks of the expansive environmental jurisprudence: the risk of courts becoming permanent environmental regulators, supervising complex technical matters beyond their institutional competence; the risk of conflating constitutional rights enforcement with legislative and administrative policy-making in ways that compromise the separation of powers; and the risk of the constitutional environmental jurisprudence being used for purposes that go beyond environmental protection into economic and political territory.

35.2 Climate Change and the Constitutional Frontier

The constitutional analysis of environmental rights in Bangladesh has been transformed, in the period since Mahmudul Islam's death in 2016, by the emergence of climate change as the defining environmental challenge of the twenty-first century and by the development of a rapidly evolving international and domestic legal framework for climate change governance.

Bangladesh is one of the most climate-vulnerable countries in the world. Its low-lying coastal geography, its dense river delta system, the recurrence of devastating flooding and cyclones, and the rising sea levels driven by global warming create conditions of extreme climate risk for a population that has very limited adaptive capacity given its poverty levels and limited institutional resources. The devastating floods of 2024, referenced in the CIVICUS assessment as among the economic challenges facing the post-uprising Bangladesh, are the kind of climate-related catastrophic events that constitutional lawyers and scholars are increasingly recognizing as constitutional events: events that engage the constitutional obligations of the state to protect the lives and the welfare of its citizens.

The emerging doctrine of constitutional climate litigation, which has produced landmark decisions in courts across the world, including the German Federal Constitutional Court's 2021 decision in the Neubauer case (holding that Germany's climate legislation was insufficiently protective of the constitutional rights of future generations), the Netherlands Supreme Court's decision in the Urgenda case (holding that the Netherlands had a constitutional and human rights

obligation to reduce greenhouse gas emissions), and numerous cases in other jurisdictions, represents a constitutional development of enormous significance for Bangladesh. In these cases, courts have held that the constitutional rights of citizens, particularly the right to life and the right to a healthy environment, impose affirmative obligations on the state to take adequate action to address the causes and consequences of climate change.

The constitutional case for climate litigation in Bangladesh is particularly strong, and it is grounded in Mahmudul Islam's constitutional analysis in ways that he could not have fully anticipated but that are entirely consistent with his constitutional method. If the right to life in Article 32 encompasses the conditions for dignified human existence, and if climate change is progressively eroding those conditions for tens of millions of Bangladeshis through flooding, displacement, loss of agricultural land, and the disruption of livelihoods that depend on climate-stable conditions, then the state's failure to take adequate climate action is a potential violation of the constitutional right to life. The directive principle obligation in Article 18A to protect the environment "for the present and future generations" provides additional constitutional grounding for climate action obligations, establishing the principle of intergenerational constitutional justice: the state's constitutional obligations extend not only to the present generation but to future generations whose rights and welfare will be profoundly affected by the constitutional choices made today.

The constitutional reform process of 2024 to 2026 has not yet fully addressed the climate change dimension of Bangladesh's constitutional framework. The Constitutional Reform Commission's report mentions environmental rights and climate vulnerability as areas requiring constitutional attention, but the specific constitutional mechanisms for climate governance, for climate justice, and for the constitutional accountability of the state for its climate action (or inaction) have not yet been developed in Bangladesh's constitutional discourse with the depth and sophistication that the urgency of the challenge demands.

35.3 The Right to Development and Its Constitutional Dimensions

The right to development, first articulated as an international legal norm in the UN Declaration on the Right to Development of 1986 and subsequently developed in the United Nations human rights system through the work of the Independent Expert on the Right to Development, provides a conceptual framework for understanding the constitutional dimensions of Bangladesh's development trajectory that goes beyond the traditional dichotomy between civil and political rights on one hand and economic and social rights on the other.

The right to development holds that every person and every people has the right to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully realized. It is simultaneously an individual right and a collective right, and it encompasses both the process and the outcomes of development: the right not only to the benefits of economic growth but to meaningful participation in the choices that determine the character and direction of development.

The constitutional dimensions of the right to development in Bangladesh are profound and multifaceted. The country's extraordinary economic transformation since independence, from

one of the poorest countries in the world to a lower-middle-income country with significant development achievements in life expectancy, child mortality, primary education, and women's economic participation, represents a remarkable developmental trajectory that has constitutional dimensions both in its achievements and in its failures.

The developmental achievements have been real. Bangladesh's average economic growth rate of approximately six to seven percent over the two decades before 2024 has lifted tens of millions of people out of extreme poverty. The dramatic improvement in the quality of social indicators, particularly for women, reflects constitutional policies that have given effect to the directive principle obligations of Part II in important respects. The Padma Bridge, opened in 2022, the Dhaka metro rail, and other infrastructure investments represent the constitutional aspiration to public investment in the conditions of economic development.

But the constitutional failures of Bangladesh's development model are equally real. The extreme youth unemployment rate of over thirty percent noted by Human Rights Watch in its 2026 World Report is a constitutional failure on a massive scale: it represents the state's inability to discharge the directive principle obligation of Article 20, which establishes the right to work as a fundamental principle of state policy. An economic model that generates significant aggregate growth while failing to provide employment for nearly a third of its young people is not fulfilling the constitutional promise of development as a right rather than as a privilege of those already positioned to benefit from economic growth.

The constitutional dimensions of the Bangladesh economy's extreme dependence on the garment sector deserve particular analysis in this context. The garment sector accounts for over eighty-four percent of Bangladesh's export earnings, and the dependence on a single sector, employing primarily low-wage female workers in conditions of significant vulnerability, represents a development model that is constitutionally problematic in several ways. It concentrates economic risk in a single sector, making the constitutional wellbeing of tens of millions of workers dependent on the vagaries of global fashion demand and international trade politics. It maintains the constitutional bargaining weakness of workers by ensuring that the labour market remains heavily tilted toward employers in the dominant export sector. And it perpetuates a form of gendered constitutional inequality in which women's economic participation is significant but is concentrated in the lowest-paid and most vulnerable tier of the production chain.

CHAPTER THIRTY-SIX: ANTI-CORRUPTION, GOVERNANCE, AND THE CONSTITUTIONAL ECONOMY

36.1 Corruption as a Constitutional Problem

The problem of corruption in Bangladesh is not merely an economic or governance problem. It is a constitutional problem of the most fundamental kind, because corruption represents a systematic violation of the constitutional principles that are foundational to the constitutional order: the rule of law (corruption substitutes private advantage for the law's requirements), equality before the law (corruption provides access to state services and state protection on the

basis of ability to pay rather than on the basis of equal constitutional rights), the separation of powers (corruption captures regulatory, judicial, and legislative institutions for the benefit of those with the resources to corrupt them), and the constitutional commitment to the welfare of all citizens (corruption diverts public resources from their constitutional purposes into private pockets).

The constitutional analysis of corruption in Bangladesh must begin with the recognition that corruption in Bangladesh is not a marginal or incidental feature of the constitutional order but a systemic and deeply embedded characteristic of the way the state actually functions. The BTI Transformation Index 2026 assessment of Bangladesh identifies "pervasive corruption" as one of the central structural impediments to Bangladesh's development and governance. The Freedom House assessment notes that "corruption and bribery, inadequate infrastructure, and official bureaucratic and regulatory hurdles hinder business activities throughout the country" and that "state involvement and interference in the economy is considerable." The World Bank and the IMF, in their engagement with Bangladesh through loan programs and policy dialogue, have consistently identified corruption as a major obstacle to economic development and institutional effectiveness.

Mahmudul Islam's constitutional analysis does not deal extensively with corruption as a systematic constitutional problem, which is understandable given that the constitutional discourse on corruption as a rights issue has developed significantly after his work reached its most comprehensive form in the 2012 edition. But his constitutional philosophy provides the essential analytical tools for understanding corruption in constitutional terms: his insistence on the rule of law, his emphasis on the constitutional importance of institutional independence, his analysis of the constitutional accountability mechanisms that are necessary to make constitutional promises real, and his understanding of the constitutional significance of the gap between constitutional text and constitutional practice all provide the framework within which the constitutional analysis of corruption must be conducted.

36.2 The Anti-Corruption Commission: Constitutional Design and Constitutional Failure

The Anti-Corruption Commission (ACC) of Bangladesh, established by the Anti-Corruption Commission Act of 2004, is the primary institutional mechanism for addressing corruption within Bangladesh's constitutional framework. The ACC has the authority to investigate, receive complaints about, and prosecute cases of corruption against public officials, politicians, and private individuals engaged in corrupt activities. It is accountable to Parliament and operates under the formal direction of the President.

The constitutional analysis of the ACC must begin with its foundational constitutional problem: it is not a constitutionally independent institution but a statutory body whose independence is subject to the political will of the executive. The Hasina government's use of the ACC as a political instrument, bringing prosecutions against opposition politicians and their associates while protecting government allies from accountability, is widely documented and constitutes one of the most serious constitutional abuses of the post-independence period. The BTI Transformation Index and Freedom House assessments both note the political capture of the ACC as a defining feature of the Hasina years.

The Constitutional Reform Commission's recommendation that the ACC be made a constitutional body, not merely a statutory one, is therefore of fundamental constitutional importance. Making the ACC a constitutional body would mean embedding its mandate, its independence, and the basic framework of its institutional design in the constitutional text itself, making it much more difficult for future governments to subordinate the ACC's independence to their political interests. This would represent a constitutional upgrade of anti-corruption governance from a statutory aspiration to a constitutional commitment.

The July Charter's endorsement of this recommendation, and the financial analysis published in the Financial Express noting that stronger independent institutions including an independent ACC "function as commitment devices" that reduce political risk and lower the cost of capital for Bangladesh's sovereign debt, illustrates the connection between constitutional governance and economic outcomes. A constitutionally independent ACC that genuinely holds corrupt officials accountable, regardless of their political connections, would reduce the transaction costs of corruption that are embedded in every economic activity in Bangladesh and would signal to international investors, creditors, and trade partners that Bangladesh's economic governance is reliable and rule-governed.

36.3 Public Finance and Constitutional Accountability

The constitutional framework for public finance in Bangladesh, including the provisions on the consolidated fund, the Annual Financial Statement, and parliamentary oversight of public expenditure, is one of the areas of the constitutional order where the gap between constitutional aspiration and constitutional reality is most substantial and most consequential.

The constitutional provisions on finance, contained in Articles 80 through 92A, establish a framework for parliamentary control of public finance that is theoretically comprehensive: all revenues of the government are to be credited to a Consolidated Fund, no expenditure can be made from public funds without parliamentary authorization, the government must present an Annual Financial Statement (the budget) to Parliament, and the accounts of the government are to be audited by the Comptroller and Auditor-General whose reports are placed before Parliament for examination by the Public Accounts Committee.

This constitutional framework for parliamentary financial accountability is, in its formal structure, entirely adequate. The problem is that the formal structure bears little relationship to the actual practice of financial governance in Bangladesh. The Public Accounts Committee, which should be the primary instrument of parliamentary accountability for public expenditure, has historically been weak and often chaired by a government supporter rather than an opposition member, contrary to the Westminster constitutional convention that the Public Accounts Committee should be chaired by a senior opposition parliamentarian to ensure genuine accountability. The Comptroller and Auditor-General's reports have frequently documented massive irregularities in public expenditure without generating effective remedial action.

The Constitutional Reform Commission's proposals for the reform of Parliament, including proposals for strengthened committee systems and for the assignment of key oversight committees to opposition members, represent an attempt to address the constitutional failure of

parliamentary financial accountability. The proposal, also contained in the July Charter, for term limits on the Prime Minister and enhanced checks and balances in the constitutional framework for executive power, is also relevant to financial governance: the concentration of executive power in the hands of a long-serving Prime Minister with unchecked authority over the allocation of public resources is itself a constitutional condition for the systematic corruption of public finance that characterized the Hasina years.

36.4 Banking, Financial Regulation, and Constitutional Dimensions

The banking sector crisis that was one of the economic legacies of the Hasina government, characterized by a massive surge in non-performing loans largely attributable to politically motivated lending to connected borrowers, represents another dimension of the constitutional economy of Bangladesh that deserves serious constitutional analysis.

The constitutional dimensions of banking regulation in Bangladesh are located in the intersection of several constitutional provisions: the property rights guarantee of Article 42 (the depositors of the banks whose assets have been plundered are victims of a constitutional violation of their property rights); the directive principle commitment to the equal distribution of wealth (the banking sector's non-performing loan crisis represents the redistribution of wealth from depositors, shareholders, and ultimately taxpayers to politically connected borrowers who have defaulted without accountability); and the constitutional commitment to the rule of law (the failure to hold major bank defaulters accountable, when those defaulters are politically connected, is a constitutional failure of the equal application of the law).

The IMF loan programs entered into by Bangladesh, first under the Hasina government in 2023 and continued under the interim government, include conditionalities relating to banking sector reform, fiscal consolidation, and anti-corruption measures that constitute a form of external constitutional governance: the international financial institutions using their economic leverage to require constitutional governance improvements that Bangladesh's domestic political dynamics have been unable to produce.

The constitutional implications of IMF conditionality for Bangladesh's constitutional sovereignty are complex and contested, and they resemble the tensions discussed in the international constitutional law analysis of Part Six. The imposition of economic policy conditions by an international financial institution on a sovereign state is not, in formal terms, a constitutional act; it is a contractual arrangement between Bangladesh and the IMF, entered into voluntarily in exchange for financial assistance. But when the conditions include requirements for governance reform, institutional independence, and anti-corruption measures, they come very close to constitutional conditionality: the external specification of the constitutional governance arrangements that Bangladesh must maintain as the price of international financial support.

CHAPTER THIRTY-SEVEN: THE CONSTITUTIONAL ECONOMY OF DEVELOPMENT: INFRASTRUCTURE, TECHNOLOGY, AND THE DIGITAL ECONOMY

37.1 Infrastructure Investment and Constitutional Dimensions

The constitutional framework for public investment in infrastructure occupies the intersection of several constitutional provisions: the directive principle obligations to promote economic development and provide for the basic necessities of life, the public finance provisions that govern the allocation of public resources, and the fundamental rights provisions that are implicated when infrastructure projects require the displacement of populations from their homes and lands.

The major infrastructure projects undertaken by the Hasina government, including the Padma Bridge (completed in 2022), the Karnaphuli River Tunnel, and the Dhaka Metro Rail, represent significant investments in the physical infrastructure of economic development that have constitutional dimensions both in their achievements and in the constitutional problems of their planning, procurement, and implementation.

The Padma Bridge is perhaps the most symbolically significant of these projects. The bridge, connecting the southwestern region of Bangladesh to the rest of the country, addresses a long-standing infrastructural deficit that has been one of the most significant constraints on the economic development of a densely populated region that is geographically isolated by the broad Padma River. The completion of the bridge, financed from Bangladesh's own resources after the World Bank withdrew from the project amid corruption allegations, has had significant economic effects that can be understood as implementing the directive principle commitment to the equal development of all regions of Bangladesh.

But the constitutional dimensions of major infrastructure projects are not limited to their economic development benefits. The displacement of populations whose homes and livelihoods are in the path of infrastructure projects raises constitutional issues of property rights, the right to an adequate standard of living, and the procedural rights of affected communities to participate in decisions that profoundly affect their lives. The constitutional framework for compulsory acquisition of property, which permits the state to acquire private property for public purposes subject to the payment of just compensation, provides the legal basis for infrastructure-related displacement but does not resolve the constitutional questions of adequacy of compensation, fairness of process, and the rights of displaced persons to sustainable resettlement.

37.2 The Digital Economy and Constitutional Rights

The emergence of the digital economy as a significant dimension of Bangladesh's economic life creates a new set of constitutional questions that the 1972 Constitution was not designed to address and that the evolving constitutional jurisprudence is only beginning to grapple with. The constitutional dimensions of the digital economy in Bangladesh encompass the right to access digital infrastructure as a dimension of the equal opportunity provisions of Articles 28 and 29, the constitutional implications of data protection and digital privacy analyzed in earlier parts of this textbook, the constitutional framework for digital commerce and online economic activity, and the constitutional dimensions of the platform economy and its implications for labour rights.

The digital divide, the gap between those who have access to digital infrastructure and those who do not, is a constitutional equality issue in a society where access to digital services is increasingly necessary for the effective exercise of constitutional rights and the participation in economic life. If digital access is required to access government services, to participate in online markets, to access educational resources, or to exercise political rights through digital communication, then the systematic exclusion of the rural poor, of women, of the elderly, and of marginalized communities from digital access is a constitutional equality problem that the directive principle commitment to the equal opportunity for all citizens to participate in economic life requires the state to address.

The digital economy also creates new constitutional challenges for labour rights. The platform economy, in which workers provide services through digital platforms such as ride-hailing, food delivery, and freelance work marketplaces, represents a form of economic activity that systematically avoids the constitutional obligations of employment law by classifying workers as independent contractors rather than employees. This classification issue is constitutionally significant because it determines whether workers have access to the constitutional labour rights framework of the Bangladesh Labour Act, including protections against unfair dismissal, the right to join trade unions, minimum wage protections, and workers' compensation for injuries. The Bangladesh Labour Act Amendment of 2025, while extending coverage to several previously excluded categories of workers, does not address the platform economy classification issue.

37.3 Remittances and the Constitutional Economy of Migration

One of the most distinctive features of Bangladesh's constitutional economy is the extraordinary importance of international labour migration and the remittances that migrant workers send back to their families in Bangladesh. Remittances are Bangladesh's largest source of foreign exchange, exceeding the garment sector's export earnings in some years, and they represent a form of economic development that is driven by millions of individual constitutional actors, the migrant workers and their families, rather than by state policy or corporate strategy.

The constitutional dimensions of Bangladesh's migration economy are significant and multidimensional. The right to freedom of movement guaranteed by Article 36, which extends to the right to leave Bangladesh and to return, is the constitutional foundation of the freedom to seek work abroad. The constitutional obligation of the state to protect the rights and welfare of its citizens extends to migrant workers abroad, who are frequently subject to exploitation, labour rights violations, and in some cases conditions amounting to forced labour and human trafficking in their destination countries.

The state's constitutional obligation to protect migrant workers encompasses several dimensions: the obligation to regulate the recruitment industry to prevent the extortion and deception of migrant workers by unscrupulous recruiters; the obligation to negotiate bilateral labour agreements with destination countries that provide meaningful protections for Bangladeshi workers; the obligation to provide consular protection to Bangladeshi workers abroad who face exploitation or abuse; and the obligation to ensure that migrant workers can access the

constitutional remedies available to them, including the right to judicial redress for violations of their contractual and constitutional rights.

The constitutional reform proposals of 2024 to 2026 have not addressed the constitutional dimensions of labour migration and migrant workers' rights with the depth that the significance of the issue demands. The Labour Rights Reform Commission established by the interim government has focused primarily on domestic labour rights, and while the 2025 Labour Act Amendment extends coverage to seafarers (a category of internationally mobile workers), the broader constitutional framework for the protection of migrant workers has not been adequately developed.

CHAPTER THIRTY-EIGHT: THE CONSTITUTIONAL FRAMEWORK FOR PUBLIC ENTERPRISE AND THE MARKET ECONOMY

38.1 The Constitutional Economy of Nationalization and Privatization

The constitutional history of Bangladesh's approach to the ownership of productive enterprises is one of the most dramatic and most instructive stories of the interplay between constitutional ideology, economic reality, and political pragmatism in the entire history of Bangladesh's constitutional development. Understanding this history is essential to understanding the contemporary constitutional economy of Bangladesh and the constitutional dimensions of the ongoing debates about the role of the state in economic life.

The founding generation's socialist vision, expressed in the directive principles of Part II and in the nationalization provisions of Article 47, was translated into practice in the immediate post-independence period through an extensive nationalization program. In 1972, the government nationalized all large industrial enterprises, all major banks, all insurance companies, and a significant part of the agricultural marketing system. The nationalized enterprises were brought under state management through a system of public corporations, and the Bangladeshi state became, almost overnight, the largest employer and the largest economic actor in the country.

The results of this nationalization program were, by most assessments, economically disastrous. The nationalized enterprises were chronically loss-making, inefficiently managed, subject to political interference in their operations and staffing decisions, and unable to generate the investment and the productivity improvements that would have made them genuinely developmental. The state's fiscal resources were drained by the subsidies required to sustain the loss-making public enterprises. The constitutional aspiration to use the state's economic power in the service of social justice and equal distribution of wealth was undermined by the capture of the nationalized enterprises by political networks that used them as instruments of patronage and private enrichment rather than as instruments of constitutional economic development.

The move toward privatization that began in the late 1970s and accelerated through the 1980s and 1990s reflected an economic and constitutional shift: the recognition that the directive principle commitment to economic development and social welfare could not be achieved

through a nationalized economy that was economically inefficient and politically captured. But this shift also raised constitutional questions. Does the constitutional commitment to the socialist principles of the founding vision permit the privatization of enterprises that were nationalized in the service of those principles? And if privatization is constitutionally permissible, what are the constitutional conditions that must be met to ensure that privatization serves the constitutional objectives of equal distribution of wealth and the welfare of the toiling masses rather than simply transferring economic power from politically connected state managers to equally politically connected private owners?

The constitutional framework for answering these questions is found in the combination of Article 47's authorization of state action in the public interest, the directive principle obligations of Part II, and the fundamental rights provisions of Part III. A privatization program that transfers public assets to private owners at below-market prices, through opaque processes that favor politically connected bidders, without adequate regulatory frameworks to prevent monopolistic exploitation of privatized assets, and without provisions for the protection of the workers employed in the privatized enterprises, is not merely bad economic policy: it is a constitutional failure that violates the property rights of the citizens whose assets are being transferred, the equality rights of the workers who are displaced without adequate protection, and the directive principle commitment to the welfare of all citizens.

38.2 The State-Owned Enterprise Sector in Contemporary Bangladesh

The contemporary state-owned enterprise (SOE) sector in Bangladesh is a complex and constitutionally significant dimension of the constitutional economy. Despite decades of privatization, Bangladesh maintains a significant public enterprise sector that includes major state-owned banks, public utilities, the Bangladesh Petroleum Corporation, the Bangladesh Chemical Industries Corporation, and a range of other enterprises in key economic sectors.

The constitutional governance of the SOE sector raises fundamental questions about the relationship between state ownership, democratic accountability, and economic efficiency that are directly relevant to the constitutional economy of Bangladesh. The constitutional analysis of SOE governance involves the intersection of the directive principle commitment to economic development (Article 13 and 16), the public finance provisions (Articles 80 through 92A), and the constitutional principles of accountability and transparency that are implicit in the rule of law framework.

The most pressing constitutional governance problem in the SOE sector is the endemic corruption and politicization that characterizes most state-owned enterprises. The systemic problem of politically motivated lending by state-owned banks, which has resulted in the massive non-performing loan crisis that the interim government inherited in 2024, is the clearest contemporary example. The constitutional governance failure here is not merely economic: it represents a violation of the constitutional fiduciary obligations of state officials, who are constitutionally obligated to manage public assets in the public interest rather than for the benefit of politically connected private actors.

38.3 The Constitutional Economy of Export Processing and Special Economic Zones

The Export Processing Zones and Special Economic Zones established by Bangladesh represent a distinctive constitutional economic arrangement: designated territories within which the normal framework of constitutional economic governance, including labour law, environmental regulation, and tax obligations, is modified or suspended in order to attract foreign direct investment and promote export-led industrial development.

The constitutional analysis of EPZs and SEZs in Bangladesh must engage with the fundamental question of whether it is constitutionally permissible for the state to create enclaves within its own territory in which the constitutional rights of workers are systematically curtailed for economic development purposes. The constitutional answer, rooted in the provisions of Part III and the directive principles of Part II, is complex.

On one hand, the constitutional framework permits the legislature to impose restrictions on constitutional rights in the public interest, and the promotion of export-led industrial development and foreign investment can plausibly be characterized as a public interest that justifies some degree of regulatory modification within designated zones. On the other hand, the constitutional rights of workers, including the right to form trade unions under Article 38, the protection against forced labour under Article 34, and the general non-discrimination protections of Article 28, are constitutional guarantees that apply to all citizens in all parts of Bangladesh's territory. A legislative scheme that systematically excludes EPZ workers from the exercise of constitutional rights that all other workers enjoy is constitutionally problematic in a way that the ordinary public interest justification cannot fully resolve.

CHAPTER THIRTY-NINE: THE CONSTITUTIONAL DIMENSIONS OF SOCIAL POLICY: EDUCATION, HEALTH, AND SOCIAL PROTECTION

39.1 The Constitutional Right to Education

The directive principle commitment to free and compulsory education for children of a specified age, established in Article 17, is one of the most important and most often cited provisions of Part II of Bangladesh's constitution. It represents a constitutional promise that the state will ensure that every child in Bangladesh receives an education, financed by the state and not subject to the ability of families to pay.

The constitutional analysis of Article 17's implementation requires a candid assessment of the gap between the constitutional promise and the reality of education in Bangladesh. The formal legal framework for free and compulsory primary education has been established through a combination of legislation, including the Primary Education (Compulsory) Act of 1990, and administrative policy. The gross enrollment rate at primary school level has reached near-universal levels, reflecting genuine progress in the implementation of the constitutional education commitment. The dramatic improvement in female enrollment at all levels of education, from primary through secondary and beyond, is one of Bangladesh's most significant development achievements and reflects the implementation of the constitutional commitment to gender equality in education.

But the formal enrollment numbers conceal significant constitutional inadequacies in the quality and accessibility of education. The dropout rate at secondary level remains high. The quality of public education, particularly in rural areas and for the poorest communities, falls well short of the constitutional standard of education that genuinely equips children for economic and civic participation. The proliferation of private tutoring as a supplement to public schooling, effectively creating a system in which the quality of education available to a child is determined by the family's ability to pay for private tutoring rather than by the equal constitutional right to quality education, represents a constitutional equality failure within the formal framework of free public education.

The recent BTI Transformation Index assessment's characterization of Bangladesh's workforce as "largely unskilled and uneducated, with only sixty percent having completed primary school," constitutes a damning constitutional assessment of the gap between the Article 17 commitment to free and compulsory education and the actual educational attainment of Bangladesh's working population. This gap is not merely an economic problem; it is a constitutional failure with profound implications for the ability of Bangladesh's citizens to exercise their full constitutional rights in economic and political life.

39.2 Health Rights and the Constitutional Framework

The constitutional framework for health rights in Bangladesh is located in the directive principle provisions of Article 18, which requires the state to regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in the broader right to life jurisprudence of Article 32, which the courts have interpreted to encompass a right to health in the positive sense of access to medical care and protection against preventable disease.

Bangladesh's public health achievements since independence have been remarkable. The dramatic reduction in infant and child mortality, the improvement in life expectancy from approximately forty-five years at independence to over seventy years today, the success of immunization programs, and the relative success in managing several epidemic disease threats have constituted a genuine constitutional achievement in the implementation of the Article 18 directive principle. These achievements reflect a combination of state health programs, the remarkable work of NGOs such as BRAC and Grameen Bank in extending health services to the rural poor, and the constitutional political commitment of successive governments to at least the basic dimensions of public health provision.

But the constitutional framework for health rights reveals significant and continuing inadequacies. The public health system remains chronically underfunded, with health expenditure as a percentage of GDP among the lowest in the world. The quality of public health services, particularly for the rural poor, falls far short of the constitutional standard of care that the right to life and the Article 18 directive principle require. The regulatory framework for private health care, which has expanded dramatically and which now provides most of the higher-quality health services available to those who can pay, is inadequate to protect patients from exploitation, malpractice, and the provision of substandard care. And the accessibility of health care for the very poor, the elderly, persons with disabilities, and other vulnerable groups is severely constrained by both the cost of private care and the inadequacy of public provision.

39.3 Social Protection and the Constitutional Economy

The constitutional framework for social protection in Bangladesh, including the various cash transfer programs, food security programs, and social insurance arrangements that constitute Bangladesh's social safety net, represents one of the most practically important dimensions of the implementation of the directive principle commitments of Part II.

Bangladesh has developed, over several decades, a significant range of social protection programs: the Vulnerable Group Development (VGD) program, the Old Age Allowance, the Allowance for Widowed, Deserted and Destitute Women, the Allowance for the Disabled, various food-for-work and cash-for-work programs, and more recently the government's social protection response to economic shocks including the COVID-19 pandemic. These programs collectively represent a constitutional commitment to the minimum economic welfare of the most vulnerable citizens, expressed in the directive principle language of Article 15.

But the constitutional analysis of Bangladesh's social protection programs reveals significant structural inadequacies. The coverage of social protection programs remains far below what would be necessary to reach all vulnerable citizens: the informal economy, which constitutes approximately thirty percent of total economic output and employs the majority of the poor, is largely excluded from formal social protection arrangements. The targeting of social protection programs has been subject to significant political interference, with benefits allocated on the basis of party affiliation rather than genuine need. And the benefit levels of most social protection programs are below the threshold necessary to lift recipients out of poverty, meaning that even full program participation does not close the gap between the constitutional standard of basic needs fulfillment and the economic reality of life for the poorest Bangladeshis.

The new electoral cycle initiated by the February 2026 general election will, whichever government assumes power, need to address the constitutional inadequacies of Bangladesh's social protection system as part of the broader constitutional reform agenda. The National Citizen Party's manifesto, which explicitly calls for "universal healthcare" and recognition of "housework in the GDP," reflects a constitutional vision of social protection that goes beyond the existing program framework and that engages directly with the directive principle commitments of Part II.

CONCLUSION TO PART SEVEN: MAHMUDUL ISLAM AND THE CONSTITUTIONAL ECONOMY OF BANGLADESH

The Constitutional Economy as Constitutional Character

The analysis conducted throughout this Part of the textbook reveals a constitutional economy that is characterized by the same fundamental tension that runs through the entire structure of Bangladesh's constitutional order: the tension between the constitutional aspiration, expressed in the directive principles of Part II and the fundamental rights of Part III, and the constitutional reality, shaped by political capture, institutional weakness, corruption, and the persistent

prioritization of the short-term interests of the politically powerful over the long-term constitutional interests of the majority of the population.

The constitutional economy of Bangladesh is, at its most fundamental level, a constitutional character question: what kind of economic order does Bangladesh's constitutional framework envision, and does the actual practice of Bangladesh's economic governance reflect that constitutional character? The answer that emerges from the analysis of this Part is nuanced but fundamentally honest: Bangladesh's constitutional framework envisions an economic order that combines individual economic freedom, including the right to own and use property, with state responsibility for ensuring that the benefits of economic life are distributed in a manner consistent with basic dignity and equal opportunity for all citizens. The actual practice of Bangladesh's economic governance has fallen systematically short of this constitutional vision, in ways that are documented in the land rights failures, the labour rights gaps, the environmental failures, the anti-corruption inadequacies, and the social protection deficiencies analyzed in the preceding chapters.

Mahmudul Islam's Contribution to the Constitutional Economy

Mahmudul Islam's treatment of the constitutional dimensions of economic life in his constitutional law book was, by his own admission, less comprehensive than his treatment of the civil and political rights and governance dimensions of Bangladesh's constitutional order. This reflects both the state of the scholarship at the time of his writing and the traditional focus of constitutional law, in the common law tradition, on the political and civil dimensions of constitutional governance.

But his constitutional philosophy provides the essential normative framework for the analysis of the constitutional economy. His insistence on the seriousness of the directive principles as constitutional norms, rather than merely aspirational statements; his understanding of the right to life as a constitutional provision that encompasses the conditions for dignified economic existence; his analysis of the property rights provisions as both a protection for individual freedom and a constitutional authorization for state action in the service of social justice; and his constitutional realism about the gap between constitutional text and constitutional practice all provide the intellectual tools necessary to conduct a serious constitutional analysis of Bangladesh's economic governance.

The constitutional reform process of 2024 to 2026, with its recommendations for stronger anti-corruption institutions, for improved labour rights enforcement, for expanded social protection, and for the possible unification of Part II and Part III into a comprehensive and justiciable bill of rights, represents the most serious attempt in Bangladesh's history to close the gap between the constitutional economy of aspiration and the constitutional economy of reality. Whether this attempt will succeed depends not only on the quality of the constitutional proposals but on the constitutional character of the political actors who will implement them: their willingness to accept the constraints that a genuine constitutional economy imposes on the exercise of political and economic power.

Mahmudul Islam's constitutional legacy is, in the domain of economic governance as in the domain of political governance, the insistence that constitutional promises must be taken seriously, that the gap between constitutional aspiration and constitutional reality is not a permanent feature of a developing country's constitutional order but a constitutional failure that must be acknowledged and addressed, and that the measure of Bangladesh's constitutional progress is not the sophistication of its constitutional text but the depth and consistency with which its constitutional principles are actually applied in the governance of the economy and the protection of the economic rights of all its citizens.

The constitutional economy of Bangladesh, like the constitutional order of which it is a part, remains a work in progress. The challenges are immense: the entrenched interests of those who have benefited from the constitutional failures of the past are powerful; the institutional capacities needed to implement a genuinely constitutional economic order are underdeveloped; and the political culture of constitutional accountability that is necessary to sustain the reforms is still fragile. But the constitutional vision is clear, the direction of reform is well-established, and the intellectual legacy of Mahmudul Islam provides the constitutional framework within which that vision can be made progressively real.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART SEVEN

The primary sources for this Part include Mahmudul Islam's "Constitutional Law of Bangladesh" (3rd ed., Mullick Brothers, 2012), particularly the chapters on the fundamental principles of state policy (Part II), the right to property (Article 42), and the prohibition of forced labour (Article 34). The Constitution of Bangladesh as amended, the Bangladesh Labour Act 2006 as amended (including the 2025 amendment), the Anti-Corruption Commission Act 2004, the Vested Properties Return Act 2001, and the CHT Accord of 1997 are essential primary legislative materials.

For the constitutional analysis of directive principles and economic and social rights, the essential readings include: Mahendra Pal Singh, "Directive Principles of State Policy," in V.N. Shukla's "Constitution of India" (Eastern Book Company, 13th ed., 2022); Mark Tushnet, "Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law" (Princeton University Press, 2008); David Bilchitz, "Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights" (Oxford University Press, 2007); and Sandra Liebenberg, "Socio-Economic Rights: Adjudication under a Transformative Constitution" (Juta, 2010).

For the labour rights constitutional analysis and the garment sector, the essential readings include: the Bangladesh Labour Act 2006 as amended by the 2025 amendment; the Imtiaz Ahmed Sajal analysis of the 2025 Labour Act Amendment published in Bangladesh Law Digest (March 2026); the Amnesty International report "Bangladesh: Garment Workers Must Receive Rights-Based Compensation and Justice Immediately" (May 2024); the Clean Clothes Campaign report marking twelve years after Rana Plaza (April 2025); the Bangladesh Labour Market Profile 2024/2025 published by the Danish Trade Union Development Agency; and the

Economic Reading of Bangladesh's 2025 Ordinances published in the Financial Express (January 2026).

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For the anti-corruption and governance analysis, the essential readings include: the Bertelsmann Stiftung BTI Bangladesh Country Report 2026; the Freedom House "Freedom in the World 2025" Bangladesh assessment; the World Bank governance indicators for Bangladesh; the Transparency International Corruption Perceptions Index historical data for Bangladesh; and the Constitutional Reform Commission's report of January 2025, particularly the sections on the Anti-Corruption Commission and institutional independence.

For the land and property rights analysis, including the CHT and the vested property issues, the essential readings include: the Vested Properties Return Act 2001 and its 2011 amendment; the CHT Peace Accord of 1997; the reports of the CHT Land Commission; the Human Rights Watch reports on the CHT; the Freedom House assessment of property rights in Bangladesh; and Adnan, Shapan, "The Myth of the Trifecta: Capital, State and Society in the Political Economy of Land Grabbing in Bangladesh" (Journal of Agrarian Change, 2013).

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End of Part Seven. Part Eight of this textbook will examine the constitutional future of Bangladesh: the referendum of February 2026 and its constitutional consequences, the prospects for sustainable constitutional democracy, the role of constitutional culture in Bangladesh's constitutional development, the unfinished constitutional agenda of Mahmudul Islam's generation, and the intellectual and constitutional legacies that will shape the constitutional development of Bangladesh in the decades to come. It will also offer a comprehensive assessment of Mahmudul Islam's enduring contribution to Bangladesh's constitutional law, placing his work in the context of the constitutional tradition of which he is now an inalienable part.

PART EIGHT

THE CONSTITUTIONAL FUTURE: REVOLUTION, REFORM, LEGACY, AND THE ENDURING SIGNIFICANCE OF MAHMUDUL ISLAM'S CONSTITUTIONAL THOUGHT

A Note on Part Eight

The seven parts that precede this final section have traced a comprehensive arc through the constitutional thought of Mahmudul Islam, moving from the biographical and intellectual foundations of his life and career through his analysis of fundamental rights, the separation of powers, parliamentary governance, the constitutional economy, Bangladesh's engagement with international law, and the unfinished promise of economic and social justice in the constitutional order. They have situated his work in the philosophical, jurisprudential, and historical context that gave it meaning, and they have subjected his arguments to the kind of critical engagement that serious constitutional scholarship demands.

This final Part arrives at a constitutional moment of extraordinary and perhaps unprecedented significance in Bangladesh's history. The July-August Uprising of 2024, the fall of Sheikh Hasina's fifteen-year administration, the formation of the Interim Government under Professor Muhammad Yunus, the establishment of eleven reform commissions, the drafting and signing of the July National Charter in 2025, the constitutional referendum of February 12, 2026, and the return of the Bangladesh Nationalist Party to power with a decisive parliamentary supermajority: these events constitute the most profound reshaping of Bangladesh's constitutional landscape since the restoration of democracy in 1990 and arguably since the founding constitutional moment of 1972 itself.

Mahmudul Islam did not live to see these events. He passed away in February 2016, eight years before the uprising that would rewrite the constitutional conditions he had spent his career analyzing. And yet his constitutional thought is more relevant to the events of 2024 through 2026 than it has ever been, precisely because the questions that the July Uprising and the constitutional reform process have placed at the center of Bangladesh's national life are exactly the questions that Islam spent his career investigating: What is the legitimate basis of constitutional authority? What prevents a parliamentary majority from becoming a constitutional dictatorship? How can fundamental rights be protected when the political branches of government refuse to honor them? What is the proper relationship between the courts and the democratic process? And what must a constitution actually do, beyond simply existing, to constitute a genuine democratic order rather than a formal shell behind which power operates without constraint?

This Part examines these questions through the dual lens of Mahmudul Islam's constitutional legacy and the constitutional reform process of 2024 through 2026. It does so with the intellectual seriousness and critical rigor that Islam himself modeled, neither celebrating the reforms uncritically nor dismissing them cynically, but subjecting them to the kind of deep constitutional analysis that can distinguish between genuine constitutional progress and the mere rearrangement of institutional furniture while the underlying pathologies of political culture remain untouched.

CHAPTER FORTY: THE JULY UPRISING OF 2024 AND ITS CONSTITUTIONAL MEANING

40.1 The Constitutional Crisis That Preceded the Uprising

The July-August Uprising of 2024 did not emerge from nowhere. It was the culmination of a constitutional crisis that had been developing over more than a decade, a crisis in which the formal structures of Bangladesh's constitutional order had been progressively hollowed out by the exercise of power in ways that were technically lawful but constitutionally corrosive. To understand what the uprising meant constitutionally, one must first understand the nature and depth of the crisis that preceded it.

Sheikh Hasina's government, which first came to power in 2009 and remained in power continuously until August 2024, had achieved a kind of constitutional capture that went far beyond ordinary political dominance. The term "constitutional capture" is used here in a precise technical sense borrowed from comparative constitutional law: it describes a situation in which a governing party uses its parliamentary majority to systematically modify constitutional institutions and rules in ways that entrench its own power while formally remaining within the bounds of legality. The concept was developed in the context of Hungary and Poland's democratic backsliding in the 2010s and was given rigorous theoretical analysis by scholars including Kim Lane Scheppele, who described the phenomenon as "autocratic legalism," and Tom Ginsburg and Aziz Huq, who analyzed it in their important 2018 work on democratic erosion as a process that operates through legal mechanisms rather than against them.

In Bangladesh's case, constitutional capture operated through several interconnected mechanisms. The abolition of the caretaker government system through the Fifteenth Amendment of 2011 removed the institutional mechanism that had been specifically designed to ensure the neutrality of the electoral process and that had been inserted into the constitution after the mass movements of the 1990s. By eliminating the caretaker system, the Hasina government removed the structural guarantee of electoral fairness and replaced it with elections conducted under its own supervision, elections that were widely regarded by independent observers as falling far short of genuinely competitive democratic standards. The elections of 2014, 2018, and 2024 all took place under conditions that were deeply problematic from a constitutional standpoint: the opposition either boycotted or was effectively prevented from participating meaningfully, and the results reflected not the genuine preferences of the electorate but the institutional advantages that the governing party had accumulated through its control of the administrative apparatus.

The politicization of the judiciary was another dimension of constitutional capture of particular relevance to Mahmudul Islam's constitutional framework. Islam had argued, across multiple editions of his constitutional law book, that an independent judiciary was not merely a desirable feature of a constitutional order but a necessary precondition of constitutionalism itself. A court that cannot render decisions that go against the political preferences of the government is not, in any meaningful sense, enforcing the constitution; it is merely providing a judicial veneer for the exercise of unconstrained political power. The evidence that accumulated during the Hasina years of systematic pressure on the judiciary, including the documented episode in which the

Chief Justice was effectively pressured into resigning in 2017 and leaving the country, constituted precisely the kind of threat to constitutional democracy that Islam's entire scholarly career had been devoted to analyzing and resisting.

The use of the Digital Security Act of 2018 and its successor, the Cyber Security Act of 2023, to suppress political opposition, restrict press freedom, and criminalize the expression of constitutionally protected political opinions represented another dimension of the constitutional crisis. Islam had devoted substantial analysis to the fundamental rights provisions of Bangladesh's constitution, including the guarantee of freedom of thought, conscience, and speech in Article 39. He had argued that constitutional rights are not empty declarations but binding constraints on the exercise of state power. The systematic use of digital security legislation to arrest journalists, bloggers, opposition activists, and critics of the government for the content of their online speech represented a direct violation of the constitutional framework that Islam had analyzed and defended.

The accumulation of these constitutional pathologies created the conditions for the explosion of popular anger that became the July-August Uprising. But what distinguishes the uprising constitutionally from ordinary political protest is the nature of the demand that animated it: not merely a change of government but a genuine constitutional transformation, a restructuring of the institutional architecture of Bangladesh's democracy to prevent the recurrence of the constitutional capture that had occurred over the preceding decade and a half.

40.2 The Jurisprudence of Revolution and Constitutional Legitimacy

The constitutional theory of revolution is one of the most contested and philosophically rich areas of constitutional jurisprudence. From John Locke's argument in the *Second Treatise of Government* that a people retains the right to dissolve a government that has violated the trust upon which political authority is founded, through Jean-Jacques Rousseau's theory of popular sovereignty as the ultimate source of all legitimate authority, through the American and French revolutionary traditions that sought to institutionalize the revolutionary moment in written constitutional documents, through Hannah Arendt's profound meditation in "On Revolution" on the relationship between the act of founding and the constitutional order that the founding creates, constitutional theorists have wrestled with the question of how a new constitutional order can establish its legitimacy when it is created through the rupture of the existing legal order rather than through the processes of amendment and change that the existing order provides.

In Bangladesh's case, the question of constitutional legitimacy has a particular intensity because of the country's history. The very existence of Bangladesh as a constitutional democracy was the product of a revolutionary moment, the Liberation War of 1971, which was itself a rupture of the existing constitutional order of Pakistan. Mahmudul Islam was deeply conscious of this founding moment and of its constitutional implications. He understood that the 1972 Constitution derived its authority not from the formal processes of constitutional amendment but from the will of a people who had fought for and won their independence, and that this popular legitimacy was the deepest foundation of the constitutional order he spent his career analyzing.

The July Uprising of 2024 invoked this same tradition of popular sovereignty. Its constitutional claim was that the Hasina government had so thoroughly violated the constitutional order, both in its formal legal structure and in its deeper commitment to the protection of individual rights and the accountability of power, that the people were justified in withdrawing their consent from that government and demanding its replacement. The extraordinary image of millions of Bangladeshis, led initially by students protesting quota reform policies and then expanding to encompass virtually every sector of society, taking to the streets and ultimately forcing the resignation of a prime minister who had won a fourth consecutive electoral term just months earlier, is a constitutionally legible event: it is the exercise of the constituent power of the people, the primordial democratic act that precedes and grounds all constitutional authority.

The legal philosopher H.L.A. Hart's distinction between the internal and external points of view in legal systems is useful here. From the internal point of view of the existing legal system, the uprising and the resignation of the Hasina government followed by the formation of an interim government under Yunus might appear constitutionally anomalous or even unlawful. But from the external point of view, the point of view that assesses legal systems against broader standards of legitimacy and justice, the uprising can be understood as a reassertion of the constituent power that underlies all constitutional systems and that no constitutional system can fully contain without extinguishing the democratic vitality upon which its own legitimacy ultimately depends.

The German constitutional theorist Carl Schmitt, whose concept of the "state of exception" has generated enormous controversy but whose analysis of constituent power contains important insights despite his deeply problematic political biography, argued that every constitutional order rests on a constituting act that precedes and transcends the positive constitutional norms it creates. The July Uprising can be understood through this lens as a constituting act, a moment in which the people of Bangladesh exercised their constituent power to dissolve a constitutional order that had become a constitutional fiction and to demand the creation of a genuinely democratic constitutional order in its place. Whether the reform process that followed has succeeded in translating this constituting act into a durable constitutional reality is the central question of the chapters that follow.

40.3 The Uprising and Mahmudul Islam's Constitutional Framework

How would Mahmudul Islam have analyzed the July Uprising and its constitutional consequences? This is necessarily a speculative question, since he did not live to witness these events, but it is not an irresponsible one. Islam left behind a sufficiently rich and detailed body of constitutional thought that it is possible to reconstruct, with reasonable confidence, the framework within which he would have approached these events.

Islam was, at his intellectual core, a constitutionalist: a scholar who believed that the constitution, properly understood and properly enforced, provides the best available framework for protecting individual rights, ensuring governmental accountability, and sustaining the conditions for democratic self-government. He was not an anarchist or a revolutionary; he did not believe that constitutional systems could or should be dissolved whenever a governing party behaved badly. He understood that constitutional stability itself has value and that a constitutional culture in which governments are regularly overturned by popular uprising rather

than by electoral competition would not be conducive to the long-term protection of the rights and freedoms that he cared most deeply about.

At the same time, Islam was a constitutional realist. He knew, from his own experience as a practicing constitutional lawyer in Bangladesh across more than four decades, that constitutional texts are not self-enforcing and that the gap between constitutional aspiration and constitutional reality is not merely an academic problem but a fact of political life that constitutional scholarship must confront honestly. He had written with remarkable candor about the ways in which Bangladesh's constitutional order had been subverted, amended, and distorted by successive governments, and he had argued consistently that the restoration of genuine constitutionalism required not merely the restoration of formal constitutional structures but the rebuilding of the political culture and institutional practices that give constitutional structures their actual meaning.

It is likely that Islam would have approached the July Uprising with a kind of cautious sympathy. The uprising expressed, in the most dramatic and direct way available to a people whose formal constitutional channels had been systematically blocked, the demand for genuine constitutionalism that had animated his own scholarly career. The protesters' core demands, though they found expression in many different and sometimes contradictory political languages, were essentially constitutional demands: for free and fair elections, for an independent judiciary, for a free press, for accountability of the powerful to the governed, and for the genuine enforcement of the fundamental rights that Bangladesh's constitution had promised since 1972. These were Mahmudul Islam's demands too, expressed in the language of constitutional scholarship rather than street protest.

But Islam would equally have insisted on the importance of channeling the revolutionary energy of the uprising into a genuine and durable constitutional reform process, one that did not merely replace one authoritarian structure with another but that created the institutional conditions for sustained constitutional democracy. The risk that constitutional revolutions will be captured by new authoritarian forces, that the people who make the revolution will find that its fruits have been harvested by those with the organizational capacity and political cunning to take advantage of the institutional vacuum that follows a revolutionary rupture, is a risk of which Islam's historical consciousness would have made him acutely aware. The constitutional reform process of 2024 through 2026 must be evaluated, from a perspective informed by Islam's constitutional philosophy, against the question of whether it has genuinely addressed this risk or merely displaced it.

40.4 Comparative Perspectives: The Constitutional Theory of Democratic Transition

The July Uprising and its constitutional aftermath are not unprecedented in global constitutional experience. The late twentieth and early twenty-first centuries have seen numerous examples of popular uprisings followed by ambitious constitutional reform processes, with wildly varying outcomes. The comparative constitutional literature on democratic transitions is rich and provides essential context for evaluating Bangladesh's experience.

Samuel Huntington's analysis of the "third wave" of democratization, while now several decades old, identified the key variables that determine whether transitions from authoritarian to democratic rule succeed in establishing durable democratic constitutional orders. His analysis pointed to the importance of elite pacts between departing authoritarian elites and incoming democratic forces, the role of institutional continuity in providing stability during the transition period, and the significance of international support for the democratization process. More recent scholarship by scholars including Steven Levitsky and Lucan Way, in their influential analysis of "competitive authoritarianism," has refined this framework by emphasizing the importance of organizational capacity, linkages to Western democratic institutions, and the depth of civil society in determining transition outcomes.

In the Bangladesh context, Huntington's framework suggests both grounds for cautious optimism and reasons for concern. On the positive side, the transition was managed without the extreme violence and institutional collapse that has characterized some other revolutionary transitions; the judiciary and major state institutions remained broadly functional; the international community, particularly Bangladesh's development partners, were supportive of the reform process; and the National Consensus Commission's painstaking negotiations with thirty political parties produced a reasonably broad-based constitutional framework in the July Charter, though the notable absences, including significant elements of the women's rights movement and several smaller parties, represent important limitations of its representativeness.

On the concerning side, the speed of the reform process, the limited public participation in the drafting of the specific reform proposals, the procedural ambiguities in the referendum mechanism, and the unresolved question of the political will of the newly elected BNP government to implement constitutional reforms that may constrain its own exercise of power, all represent genuine risks that a student of Mahmudul Islam's constitutional scholarship would be bound to take seriously.

CHAPTER FORTY-ONE: THE CONSTITUTIONAL REFORM COMMISSION AND THE JULY CHARTER

41.1 The Formation and Mandate of the Reform Commissions

When the Interim Government of Bangladesh assumed office on August 8, 2024, under the leadership of Professor Muhammad Yunus, it faced a constitutional situation of extraordinary complexity and delicacy. The immediate constitutional questions were practical and urgent: how to maintain governmental continuity during the transition, how to manage the security situation in the aftermath of the uprising, how to establish the legal basis for interim governance in the absence of an elected parliament, and how to create the political and institutional conditions for the holding of free and fair elections within a reasonable timeframe.

But the deeper constitutional challenge was structural: how to redesign Bangladesh's constitutional architecture in ways that would prevent the recurrence of the constitutional capture that had occurred under the Hasina government. This was a challenge that could not be met

through ordinary legislative action, since the entire legislative framework was itself part of what needed to be reformed. It required a constituent-power approach, an exercise of the foundational democratic authority to redesign the rules of the political game.

The Interim Government's response was the establishment of eleven reform commissions, covering constitutional design, the judiciary, the electoral system, public administration, the anti-corruption framework, the police, healthcare, mass media, labour rights, and women's rights. This multi-commission approach had both practical and political advantages. Practically, it allowed specialized expertise to be brought to bear on the specific institutional challenges of each sector, avoiding the tendency of omnibus constitutional reform processes to treat all institutional problems as equivalent and to apply one-size-fits-all solutions. Politically, it created multiple forums for stakeholder engagement and allowed the reform agenda to be presented as a comprehensive and technically sophisticated program rather than a politically motivated intervention.

The Constitutional Reform Commission (CRC), led by Professor Ali Riaz of Illinois State University in the United States, was in many respects the most important of the eleven commissions, since its recommendations would shape the foundational framework within which all the other institutional reforms would operate. The choice of Professor Riaz to lead the commission was significant in itself. Riaz is one of the most respected scholars of Bangladeshi politics and political economy in the world, the author of numerous books on Bangladeshi political development, Islam and democracy in Bangladesh, and the dynamics of authoritarian consolidation. He brought to the commission both deep knowledge of Bangladesh's specific constitutional history and traditions and a broad comparative perspective informed by his engagement with the global comparative constitutional literature.

The commission's consultation process was extensive, involving engagement with political parties, civil society organizations, legal professionals, academics, and ordinary citizens. The methodology of the consultation process drew on practices developed in comparative constitutional reform experiences across the globe, from the South African constitution-making process of the 1990s to the more recent experiences of Egypt, Tunisia, Chile, and Iceland. The Tunisian experience of 2011 through 2014, in which a national constituent assembly produced a widely acclaimed democratic constitution through an inclusive and transparent process, was cited by several members of the commission as an inspirational model, though Tunisia's subsequent constitutional setbacks, when President Kais Saied suspended the assembly and replaced the 2014 constitution with a new document in 2022, served as a cautionary reminder of the fragility of constitutional settlements in societies with deeply contested political cultures.

41.2 The Ali Riaz Commission's Recommendations: A Constitutional Analysis

The recommendations of the Constitutional Reform Commission, submitted to the Interim Government in January 2025, constitute the most ambitious and comprehensive set of constitutional reform proposals in Bangladesh's history. They deserve detailed constitutional analysis, both for their intrinsic significance and for the light they shed on the unfinished constitutional agenda of Mahmudul Islam's generation.

The commission's most fundamental recommendation was the replacement of the four foundational principles of the 1972 Constitution, nationalism, socialism, democracy, and secularism, with a revised set of five principles: equality, human dignity, social justice, pluralism, and democracy. The only principle retained from the original set was democracy itself, though even democracy was understood in a richer and more substantive sense than the thin electoral democracy that had been formally preserved through three decades of manipulated elections.

This recommendation is constitutionally momentous and deserves careful unpacking. Mahmudul Islam had devoted substantial analysis in his constitutional law book to the four foundational principles of the 1972 Constitution and had argued with characteristic precision that each principle carried a specific and consequential constitutional meaning. Nationalism, for Islam, was not ethnic nationalism but the civic nationalism of a people who had fought for their independence on the basis of shared linguistic and cultural identity, a nationalism that was inclusive of all who chose to participate in the Bengali-language democratic polity that Bangladesh represented. Socialism, for Islam, was not Soviet-style command economy socialism but a commitment to social and economic equality, to the reduction of the vast inequalities that colonial and post-colonial economic arrangements had produced, and to the constitutional recognition of basic economic rights. Democracy, for Islam, was substantive and not merely procedural, encompassing not only free elections but the genuine accountability of power to the governed and the protection of civil and political freedoms. And secularism, for Islam, was not irreligion or hostility to religion but the constitutional commitment to the equal treatment of all citizens regardless of their religious beliefs, a commitment rooted in the experience of a liberation struggle in which people of all faiths had fought and died together.

The commission's recommendation to replace these four principles with a new set raises several jurisprudential questions of the greatest importance. First, is the replacement of nationalism with a combination of equality, human dignity, and pluralism a constitutional improvement? There is a strong case that it is. The term "nationalism" had become ideologically contested in Bangladesh, associated alternately with the Bengali cultural nationalism of the 1972 Constitution and the "Bangladeshi nationalism" that Ziaur Rahman had promoted as an alternative framework that was more religiously inflected and less associated with the secular cultural identity of the Bengali language movement. By replacing the contested term with a set of more universal and less ideologically charged principles, the commission sought to create a constitutional foundation that could command broader political consensus and that was more clearly aligned with the universal values of contemporary international human rights law.

Second, is the removal of socialism from the foundational principles constitutionally wise? This is a more difficult question. Mahmudul Islam understood socialism in the 1972 Constitution as a directive principle of governance committed to economic equality and social justice, not as a rigid ideological commitment to any particular economic system. The commission's inclusion of social justice among the replacement principles preserves this commitment in a somewhat diluted form. But the removal of socialism as a constitutional principle also removes the strongest constitutional basis for state intervention in the economy for redistributive purposes, and it does so at a moment when economic inequality in Bangladesh has continued to grow. The constitutional tension between economic liberalism and social solidarity that the socialism

principle was designed to address has not disappeared simply because the constitutional language describing it has changed.

Third, is the removal of secularism from the foundational principles constitutionally wise? This is perhaps the most controversial of the commission's recommendations. The case for its removal rests on the argument that secularism, as it functioned in Bangladesh's constitutional politics, had become a marker of partisan identity rather than a genuine constitutional commitment, associated with the Awami League and with a conception of national identity that excluded or marginalized many devout Muslims. The commission's inclusion of pluralism as a replacement principle reflects an attempt to preserve the core constitutional value that secularism was intended to serve, the equal treatment of all religious communities, without the political baggage that the term had accumulated.

But there is a powerful case on the other side, advanced by numerous constitutional scholars and civil society advocates, that the removal of secularism from the foundational principles represents a significant constitutional retreat. Islam is already the state religion under the Eighth Amendment, which the commission's proposals do not appear to address. Without the explicit constitutional commitment to secularism as a foundational principle, the state religion provision stands uncountered by any explicit constitutional commitment to the equal treatment of religious minorities. The experience of religious minorities in Bangladesh, including Hindus, Christians, Buddhists, and Ahmadiyya Muslims, gives particular urgency to this concern: the constitutional protection of religious minorities requires not merely the formal inclusion of pluralism as a principle but the specific constitutional and institutional guarantees that secularism, properly understood, was designed to provide.

41.3 The Structural Constitutional Reforms: Bicameralism, Presidential Powers, and Judicial Independence

Beyond the foundational principles, the commission's recommendations addressed three structural dimensions of Bangladesh's constitutional architecture that are directly relevant to the pathologies of constitutional capture that the uprising was responding to: the structure of the legislature, the balance of power between the president and the prime minister, and the independence of the judiciary.

The proposal for a bicameral parliament, with a 400-seat directly elected lower house (Jatiya Sangsad or National Assembly) and a 105-seat proportionally elected upper house (Senate), represents a fundamental restructuring of Bangladesh's parliamentary system. Bangladesh has had a unicameral parliament since 1972, with the brief exception of the period between the Second Amendment and various subsequent changes. The case for bicameralism in Bangladesh's context is primarily a structural accountability case: a second chamber, particularly one elected on a different basis (proportional representation) from the lower house, provides an institutional check on the exercise of power by a parliamentary majority, creates additional space for deliberation, and represents the interests of political minorities and smaller parties that might otherwise be entirely excluded from the legislative process under a purely majoritarian single-member-district system.

Mahmudul Islam's analysis of Bangladesh's parliamentary system was primarily focused on the relationship between the executive and the legislature within the Westminster framework, and he did not specifically address the question of bicameralism. But his broader constitutional philosophy, with its emphasis on the importance of institutional checks on the concentration of power and its deep skepticism of arrangements that allow any single political actor to exercise unconstrained authority, provides clear support for the structural rationale for a second chamber.

The comparative constitutional literature on bicameralism is extensive and mixed. Studies of federal systems like Australia, Germany, India, and the United States have demonstrated that upper houses can play genuinely important roles in legislative deliberation and in representing interests that would otherwise be underrepresented. But studies of smaller or newer democracies have also shown that upper houses can become sources of political deadlock, that they can be captured by particular regional or political interests in ways that distort rather than improve democratic representation, and that they can become additional sites for political patronage rather than genuine deliberative institutions. The success of Bangladesh's proposed Senate will depend critically on the specific rules governing its composition, powers, and relationship with the lower house, rules that at the time of this writing remain to be fully specified in the constitutional amendment process that the referendum has mandated.

The proposals to enhance presidential powers and to impose term limits on the prime minister reflect a diagnosis of Bangladesh's constitutional pathology that Mahmudul Islam would have recognized immediately: the excessive concentration of executive power in the office of the prime minister under the existing Westminster parliamentary framework. Islam had written with great analytical precision about the relationship between the president and the prime minister in Bangladesh's constitutional system, noting that while the president is formally the constitutional head of state, the prime minister, as the head of government commanding the confidence of parliament, exercises the actual executive power of the state, and that this concentration of executive, legislative, and party power in a single person constituted a structural vulnerability of Bangladesh's constitutional design.

The commission's recommendations on this point are, however, somewhat internally inconsistent. Enhancing presidential powers in a parliamentary system carries the risk of creating a dual executive in which neither the president nor the prime minister has clear constitutional authority, potentially leading to constitutional gridlock or, worse, to a new form of executive concentration in the office of the president. The experience of semi-presidential systems in Africa, Eastern Europe, and Asia has been highly variable, and the constitutional design of the proposed expanded presidential powers will be crucial to whether the reform achieves its intended objective of dispersing rather than concentrating executive authority.

The recommendations on judicial independence represent perhaps the most directly relevant set of proposals from the perspective of Mahmudul Islam's constitutional thought. The commission proposed that the appointment of High Court justices be vested in the Chief Justice, removing it from the purely political process that had allowed successive governments to pack the court with loyalists. The proposal to strengthen the Supreme Judicial Council and to give the Supreme Court control over the appointment of lower court judges, removing this power from the Ministry of Law, addresses one of the most chronic pathologies of Bangladesh's judicial system,

the subordination of the lower judiciary to executive control. And the constitutional guarantee of full judicial independence, including the establishment of High Court benches in each division of the country, represents a significant expansion of the judicial presence throughout Bangladesh's territory, making constitutional justice more accessible to citizens in regions far from Dhaka.

Mahmudul Islam had argued throughout his career that genuine judicial independence required not merely constitutional proclamations but specific institutional arrangements that insulated the judiciary from political pressure. His analysis of the appointment process, the security of judicial tenure, the financial independence of the courts, and the contempt power as a mechanism for protecting judicial authority from executive interference provides the theoretical framework within which the commission's judicial independence proposals should be assessed. The proposals are in many respects consistent with the institutional requirements that Islam identified, but their success will depend on the willingness of the newly elected BNP government to implement them even when doing so constrains its own ability to influence judicial appointments and decisions.

41.4 The July Charter and the Process of Constitutional Negotiation

The July National Charter, signed on October 17, 2025 by the National Consensus Commission and twenty-four political parties at the Jatiya Sangsad, is a document of both significance and limitation. Its significance lies in the unprecedented process of multi-party negotiation that produced it: thirty political parties participated in consultations over many months, coordinated by the National Consensus Commission under the chairmanship of Chief Adviser Yunus, and the resulting document represents a genuine political compromise among actors with deeply divergent constitutional visions. The Charter's limitations lie in what the process excluded: the women's reform commission was not represented in the National Consensus Commission; several smaller parties and civil society actors felt their contributions were not adequately reflected in the final document; and the BNP, the most electorally significant opposition party, maintained reservations about the timing and process of constitutional reform, insisting that comprehensive constitutional amendments should await the formation of an elected parliament with a democratic mandate.

The BNP's position on this point deserves careful constitutional analysis rather than dismissal. The party's argument that constitutional amendments should be made by an elected parliament rather than by an unelected interim government reflects a genuine constitutional principle: the principle that constitutional changes of the most fundamental kind require the democratic authorization of the people expressed through their elected representatives. This principle is deeply embedded in constitutional theory, from Locke's social contract theory through the contemporary democratic legitimacy literature, and it is a principle that Mahmudul Islam, with his deep commitment to parliamentary democracy, would have found compelling.

At the same time, the counter-argument for acting before the election has equal constitutional force: the experience of Bangladesh since the Fifteenth Amendment demonstrated that a parliamentary supermajority, if not constrained by prior constitutional commitments, can be used to systematically dismantle constitutional protections. The National Consensus Commission's decision to secure multi-party agreement on a reform framework before the election, and then to

subject that framework to popular approval through a referendum conducted simultaneously with the election, represents an attempt to create constitutional commitments that will bind even a parliamentary supermajority, by grounding them in a prior popular mandate that the newly elected parliament cannot simply ignore.

CHAPTER FORTY-TWO: THE REFERENDUM OF FEBRUARY 2026 AND ITS CONSTITUTIONAL CONSEQUENCES

42.1 The Constitutional Theory of Referendums

The constitutional referendum of February 12, 2026 represents a departure from Bangladesh's constitutional tradition that requires careful jurisprudential analysis. Bangladesh's constitution, as Mahmudul Islam analyzed it, establishes a parliamentary system in which constitutional amendments are made by the parliament with specified supermajority requirements. Article 142 of the constitution provides for constitutional amendment by a two-thirds majority of all the members of parliament, with certain provisions requiring additional referendum approval. The 1972 Constitution did not include provisions for general constitutional referendums as a mechanism for initiating constitutional change, and the referendum of 2026 was authorized not by an ordinary constitutional amendment process but by a presidential order, the July National Charter (Constitutional Amendment) Implementation Order of November 13, 2025, issued on the advice of the Interim Government.

The constitutional legitimacy of this referendum authorization mechanism has been contested by constitutional scholars and political actors alike. Sara Hossain, a prominent Bangladeshi human rights lawyer writing for ConstitutionNet in March 2026, raised the question of whether the path from the negotiated Charter to the popular vote generated confusion over mandate, legitimacy, and the proper limits of interim governance in Bangladesh's fragile constitutional transition. This is precisely the kind of constitutional question that Mahmudul Islam would have subjected to the most rigorous analysis, asking not merely whether the referendum was politically desirable but whether it was constitutionally authorized and what legal effect its result could properly have.

The theoretical literature on constitutional referendums is extensive and offers several frameworks for evaluating the February 2026 referendum. Richard Albert's work on constitutional amendments and constitutional transformations distinguishes between formal constitutional change, achieved through the amendment procedures specified in the constitution itself, and constitutional transformation, achieved through accumulated practice and interpretation rather than through the formal amendment procedure. The July Charter referendum operates in a somewhat novel space between these two categories: it is not a formal constitutional amendment (since it did not follow the Article 142 procedure) but it is more than a mere political agreement, having been given legal force through a presidential order and subjected to popular approval through a formal vote.

The comparative experience of constitutional referendums in democratic transitions is instructive. The 2014 Tunisian constitutional referendum, the South African constitutional

referendum of 1996, and the Spanish constitutional referendum of 1978 all involved popular approval of constitutions or major constitutional changes as part of democratic transition processes. In each case, the referendum served to ground the new constitutional order in a direct expression of popular will that transcended the authority of any particular political actor or institution. The legitimating function of the referendum was perhaps more important than its strictly legal function: it transformed what might otherwise be seen as the constitutional imposition of one political faction's preferences into a democratic mandate that all subsequent political actors would be bound to respect.

In Bangladesh's case, the referendum of February 2026 achieved this legitimating function, at least partially. The 68 percent vote in favor of the reform package, on a turnout of approximately 60 percent of registered voters, constitutes a clear popular mandate for constitutional change of the kind proposed in the July Charter. It is constitutionally significant that this mandate was secured simultaneously with the parliamentary election that gave the BNP a two-thirds supermajority, since it means that the newly elected parliament has both the formal constitutional authority to amend the constitution (through the two-thirds majority required by Article 142) and the democratic mandate to do so through the reform framework approved in the referendum.

42.2 The Referendum Result and Its Interpretation

The result of the February 2026 referendum requires careful constitutional interpretation, particularly in light of the ambiguities that scholars have identified in the framing of the referendum question itself. The ballot question, as described in the Implementation Order, asked voters to approve four separate clusters of reforms simultaneously: the caretaker government and election commission provisions; the bicameral parliament with a proportionally elected upper house; thirty specific reform proposals on representation, checks and balances, rights, and local government; and a general endorsement of the remaining Charter proposals subject to political party commitments.

The problem with this multi-part referendum question, identified by Sara Hossain and other constitutional scholars, is that it does not permit voters to disaggregate their approval or disapproval of the different reform proposals. A voter who strongly favored the caretaker government provisions but had reservations about the specific structure of the proposed upper house had no constitutional mechanism for expressing this nuanced position: the single yes-no question required either acceptance or rejection of the entire package. This structural limitation of the referendum design has implications for the interpretation of the "Yes" vote: it is not possible to say, from the referendum result alone, precisely which of the reform proposals commanded the 68 percent majority that voted "Yes" and which might have commanded a different level of support if voted on separately.

This ambiguity is constitutionally significant for the implementation process. The Implementation Order provides that if the referendum is approved, a Constitution Reform Council composed of all newly elected members of parliament will be formed to complete the constitutional amendments within 180 working days. But the Reform Council will need to make specific constitutional drafting decisions about matters on which the referendum provides only the most general guidance. The question of how the upper house should be structured, what its

specific powers should be, how the enhanced presidential powers should be delineated, and how the expanded fundamental rights should be framed and enforced: these are constitutional questions of enormous technical complexity that the referendum result does not resolve and that will require the kind of careful constitutional drafting that was Mahmudul Islam's particular specialty.

The constitutional principle of fidelity to the referendum mandate will be crucial in this process. The newly elected parliament, with the BNP commanding a two-thirds supermajority, will be tempted to interpret the broad mandates of the referendum in ways that serve its own political interests, as every government in Bangladesh's constitutional history has done when given the opportunity to design the rules of the political game. The institutional safeguard against this tendency is precisely the multi-party negotiation process that produced the July Charter: the Charter represents a political commitment by thirty political parties, including the BNP, to a specific set of reform principles, and the referendum result has given that commitment the additional backing of a popular mandate. Whether this double layer of political and popular commitment will be sufficient to ensure faithful implementation is perhaps the central question of Bangladesh's constitutional development in the immediate post-referendum period.

42.3 The Constitutional Implications of the BNP's Supermajority

The February 2026 election produced a result of constitutional significance beyond the referendum: the Bangladesh Nationalist Party secured a decisive two-thirds supermajority in the National Assembly. This result returns the BNP to power for the first time in seventeen years, after the long period of Awami League dominance that ended with the July Uprising. But it also creates a constitutional situation that calls for careful analysis in light of the lessons of Bangladesh's constitutional history.

A two-thirds parliamentary supermajority is, in Bangladesh's constitutional framework, an instrument of enormous power. Article 142 of the constitution requires a two-thirds majority for constitutional amendments, which means that the BNP, commanding this supermajority, has the formal constitutional authority to amend the constitution at will, subject only to the requirement of a referendum for certain specified provisions. The constitutional history of Bangladesh is in large part a history of how parliamentary supermajorities have been used, with varying degrees of constitutional responsibility and constitutional irresponsibility, to remake the constitutional order.

The question of how the BNP will use its supermajority is therefore not merely a political question but a constitutional one of the greatest importance. The July Charter provides the primary framework within which this power is to be exercised: the party has committed, through its participation in the Charter process, to implementing the reform agenda approved by the referendum. But the Charter's implementation requires specific constitutional drafting decisions that will shape the constitutional order for years or decades to come, and the temptation to draft constitutional provisions in ways that advantage the governing party at the expense of the opposition and of constitutional balance is a temptation that no government in Bangladesh's history has entirely resisted.

Mahmudul Islam's constitutional analysis provides the most relevant framework for evaluating the BNP's use of its supermajority. His consistent argument across multiple editions of his constitutional law book was that the legitimacy of constitutional amendments depends not merely on their formal compliance with the amendment procedure but on their substantive consistency with the foundational principles of the constitutional order. A constitutional amendment that formally complies with Article 142 but that is designed to entrench the power of the governing party at the expense of the democratic rights of the opposition and the fundamental rights of individuals is not, in Islam's view, a constitutionally legitimate exercise of the amendment power; it is a constitutional manipulation that undermines the very constitutional order it formally invokes.

CHAPTER FORTY-THREE: THE PROPOSED TRANSFORMATION OF FOUNDATIONAL PRINCIPLES

43.1 From Four to Five: The Constitutional Philosophy of Foundational Principles

The recommendation of the Constitutional Reform Commission to replace the four foundational principles of the 1972 Constitution with a new set of five principles represents one of the most constitutionally significant proposals of the entire reform process, not merely as a matter of symbolic politics but as a matter of jurisprudential substance. Constitutional foundational principles are not decorative features of constitutional documents. They perform specific constitutional functions: they guide the interpretation of specific constitutional provisions, they establish the outer limits of permissible legislative action, they express the fundamental commitments of the political community that the constitution constitutes, and they serve as reference points against which the constitutional legitimacy of governmental action is assessed.

Mahmudul Islam devoted careful analysis to the four foundational principles in his constitutional law book, arguing that each principle had a specific and consequential constitutional meaning that should inform the interpretation of every other provision of the constitution. His analysis of nationalism drew on the historical context of Bangladesh's liberation struggle and on the specific character of Bangladeshi nationhood: not an ethnic or religious nationalism but a civic nationalism rooted in shared language, culture, and the experience of fighting together for independence. His analysis of socialism drew on the directive principle tradition of the Indian Constitution and on the specific constitutional commitment to reducing economic inequality and ensuring that the benefits of national development reached the poorest citizens. His analysis of democracy drew on the deepest wells of democratic theory, from Rousseau through Mill to contemporary deliberative democracy theorists, and insisted that democracy in Bangladesh's constitutional framework meant substantive and not merely formal democracy, encompassing genuine political competition, civil and political freedoms, and the accountability of the powerful to the governed.

His analysis of secularism was perhaps the most nuanced and the most prescient. Islam understood, writing in the 1990s and 2000s, that secularism in Bangladesh's constitutional context was not a simple matter. The Eighth Amendment of 1988 had made Islam the state

religion, which stood in apparent tension with the original secularism principle. Subsequent amendments had partially restored the secular character of the constitutional framework, but the tension between the state religion provision and the secularism principle had never been fully resolved. Islam argued that the core of secularism in Bangladesh's constitutional framework was not the irrelevance of religion to public life but the constitutional guarantee of the equal treatment of all religious communities and the prohibition of religious discrimination in the exercise of state power. This understanding of secularism is both constitutionally defensible and consistent with Bangladesh's own religious tradition, in which Islam is the majority faith of the population but in which religious pluralism has deep historical roots.

The commission's decision to replace secularism with pluralism is best understood as an attempt to preserve the substantive constitutional commitment that Islam identified, the equal treatment of all religious and cultural communities, while discarding the ideological label that had become politically contested. The constitutional question is whether pluralism, as a constitutional principle, can carry the same jurisprudential weight as secularism in protecting religious minorities from state discrimination and in constraining the political exploitation of religious identity. The comparative constitutional experience suggests that pluralism as a constitutional principle can be effective in this regard if it is backed by specific constitutional provisions guaranteeing equal treatment and non-discrimination, and if the courts interpret it expansively. The risk is that pluralism, as a concept, is more easily stretched to accommodate arrangements that formally acknowledge diversity while actually privileging the majority religious community.

43.2 Equality and Human Dignity as Constitutional Principles

The inclusion of equality and human dignity among the foundational principles of the proposed new constitutional framework deserves particular attention from the perspective of constitutional philosophy and jurisprudence. These are not merely political slogans but concepts with rich philosophical traditions and well-developed jurisprudential meanings that the courts of many constitutional systems have been developing and refining over many decades.

Equality as a constitutional principle has generated one of the largest bodies of constitutional jurisprudence in the world. From the United States Supreme Court's transformative interpretation of the Fourteenth Amendment's equal protection clause through the Indian Supreme Court's development of an expansive equality jurisprudence under Articles 14 through 16 of the Indian Constitution, through the South African Constitutional Court's interpretation of Section 9 of the South African Constitution as a transformative guarantee of substantive equality rather than merely formal equal treatment, constitutional courts have developed sophisticated frameworks for determining what equality requires in concrete cases of discriminatory law and practice.

Mahmudul Islam's analysis of the equality provisions of the existing constitution, Articles 27 through 29, is one of the strongest sections of his constitutional law book. He argued with great analytical precision that the constitutional guarantee of equality before the law and equal protection of the law in Article 27 is not merely a formal prohibition on facially discriminatory legislation but a substantive guarantee of equal treatment that extends to the administration of law and to the exercise of executive discretion. He drew on the rich body of English administrative law and Indian constitutional law to develop the principle that equality before the

law requires consistency, non-arbitrariness, and the exclusion of irrelevant considerations from official decision-making.

If equality becomes a foundational constitutional principle rather than merely a specific constitutional provision, it acquires a broader constitutional significance. It becomes a framework for interpreting all other constitutional provisions, a standard against which all governmental action must be assessed, and a basis for challenging constitutional amendments that formally comply with the amendment procedure but that are substantively incompatible with the commitment to equal treatment. This is a potentially powerful constitutional development, and it aligns with the direction in which constitutional equality jurisprudence has been developing globally in the early twenty-first century.

Human dignity as a constitutional principle has an even richer philosophical history. Its roots in Kantian moral philosophy, in the idea that every human being must be treated as an end in themselves and never merely as a means to another's ends, were given constitutional form most explicitly in the German Basic Law of 1949, which places human dignity in the very first article of the constitutional text and treats it as inviolable. The German Federal Constitutional Court's development of the human dignity guarantee has been one of the most sophisticated exercises of constitutional jurisprudence in the world, addressing questions ranging from the dignity implications of biometric surveillance through the constitutional requirements of welfare provision to the dignity dimensions of criminal punishment.

The inclusion of human dignity as a foundational constitutional principle in Bangladesh's proposed new constitutional framework has the potential to transform Bangladesh's constitutional jurisprudence in ways that go far beyond the existing fundamental rights provisions. A constitutional dignity principle can serve as the basis for constitutional claims that do not fit neatly within the existing categories of civil and political rights: claims about the dignity of workers subjected to hazardous and exploitative labor conditions, claims about the dignity of the poor denied access to basic necessities, claims about the dignity of women subjected to gender-based violence in public and private spaces, and claims about the dignity of religious and ethnic minorities subjected to discrimination and exclusion. In this sense, the inclusion of human dignity as a foundational principle represents the most philosophically ambitious aspect of the constitutional reform proposals, and its jurisprudential development will be one of the most important and most challenging tasks that Bangladesh's Supreme Court will face in the years ahead.

43.3 The Constitutional Identity Question: "Bangladeshi" Versus "Bengalee"

One of the most symbolically significant and constitutionally consequential of the reform proposals is the recommendation to replace "Bengalee" with "Bangladeshi" as the designation of citizenship in the constitution, and the related proposal to recognize all mother languages spoken in Bangladesh as state languages alongside Bengali. These recommendations address a constitutional question about national identity that has been deeply contested since the founding of Bangladesh and that Mahmudul Islam addressed with characteristic analytical precision.

The original 1972 Constitution designated the citizenship of Bangladesh as "Bengalee," reflecting the constitutional vision of the state as the political expression of the Bengali-language cultural community. This vision had its roots in the Language Movement of 1952 and in the liberation struggle's emphasis on linguistic and cultural identity as the basis of Bangladeshi nationhood. But it also created a constitutional tension with the reality of Bangladesh's population, which includes significant communities, particularly in the Chittagong Hill Tracts, whose primary languages and cultural identities are not Bengali. The indigenous and ethnic minority communities of Bangladesh, the Chakma, Marma, Tripura, Khumi, Bawm, and many other peoples of the CHT and other regions, do not identify primarily as Bengali, and designating their citizenship as "Bengalee" can be experienced as a denial of their distinct cultural identities.

The recommendation to replace "Bengalee" with "Bangladeshi" and to recognize all mother languages as state languages alongside Bengali represents a significant constitutional evolution toward a more pluralistic model of national identity. It reflects the understanding, increasingly common in contemporary comparative constitutional law, that the constitutional recognition of linguistic and cultural diversity is not a threat to national unity but a condition of genuine democratic inclusion. The Canadian model of official bilingualism, the Swiss model of four national languages, and the South African model of eleven official languages all demonstrate that constitutional recognition of linguistic diversity can coexist with and indeed strengthen national cohesion.

Mahmudul Islam had written about the CHT situation and the claims of indigenous communities in ways that showed his awareness of the tensions between the constitutional framework of Bengali civic nationalism and the distinct identities of Bangladesh's indigenous peoples. His analysis was, by his own standards, somewhat underdeveloped on this point, reflecting both the limitations of the scholarship available to him at the time of writing and the political sensitivities surrounding the CHT conflict. The reform proposals on national identity and linguistic recognition go significantly beyond anything that Islam explicitly advocated, but they are consistent with the deeper logic of his constitutional philosophy: the commitment to the equal dignity of all citizens and to a constitutional order that genuinely includes rather than merely tolerates those who differ from the majority.

CHAPTER FORTY-FOUR: BICAMERALISM, PARLIAMENTARY SOVEREIGNTY, AND THE RESTRUCTURING OF LEGISLATIVE POWER

44.1 The Theory of Bicameralism and Bangladesh's Constitutional Context

The proposal for a bicameral parliament in Bangladesh's reformed constitutional framework requires analysis at two levels: the theoretical level of constitutional design and the practical level of Bangladesh's specific political circumstances. At the theoretical level, the case for bicameralism rests on several distinct but related arguments.

The first argument is the checks and balances argument: a second legislative chamber, elected on a different basis and by a different process from the first, provides an additional institutional

check on the exercise of legislative power, requiring that legislation receive approval from two democratically legitimate bodies before it becomes law. This is particularly important in systems like Bangladesh's, where the executive dominates the legislature through the fusion of powers inherent in the Westminster parliamentary model. A second chamber that is not directly controlled by the prime minister and the cabinet provides an additional site of legislative scrutiny and deliberation.

The second argument is the representational argument: different electoral systems tend to produce different political outcomes, and a proportionally elected upper house will represent the diversity of political opinion in Bangladesh more faithfully than a single-member-district lower house. Under the current unicameral system, a party that wins fifty-one percent of the popular vote can, depending on how those votes are distributed geographically, win a vastly disproportionate share of parliamentary seats. The BNP's two-thirds supermajority in the February 2006 elections, despite winning approximately sixty percent of the popular vote, illustrates this tendency. A proportionally elected upper house would give representation to smaller parties whose support is geographically dispersed rather than concentrated, including the Awami League in the immediate post-election period, parties of the left, religious parties, and parties representing regional or ethnic minorities.

The third argument is the deliberative argument: a second chamber, particularly one whose members have longer terms and are elected at different times from the lower house, can provide a form of temporal check on the legislative process, creating an institutional mechanism for the reconsideration of hasty or politically motivated legislation. The classic formulation of this argument is attributed to George Washington, who is said to have described the Senate's role as that of the saucer into which the hot coffee of the lower house is poured to cool. Whether bicameral systems actually achieve this deliberative function is contested in the political science literature, but the institutional design logic is sound.

Mahmudul Islam's analysis of Bangladesh's parliamentary system focused primarily on the unicameral framework established by the 1972 Constitution and on the specific ways in which that framework had been exploited by successive governments to concentrate power in the executive. He did not specifically address the question of bicameralism, which was not on Bangladesh's constitutional agenda during his lifetime. But his analysis of the failure of parliamentary accountability in Bangladesh's unicameral system provides the strongest available justification for the reform: a parliament in which the governing party controls a supermajority and in which the opposition either boycotts or is marginalized cannot perform the accountability function that the constitutional system assigns to the legislature, and a second chamber elected on a different basis provides an additional institutional mechanism for maintaining some degree of legislative scrutiny of executive action even when the political conditions make meaningful opposition in the lower house impossible.

44.2 The Constitutional Design of the Proposed Senate

The specific design of the proposed 105-seat Senate, elected on the basis of the proportion of votes received by political parties in the national election, raises important constitutional design

questions that will need to be resolved in the drafting of the specific constitutional amendments mandated by the referendum.

The most important design question is the relationship between the Senate and the National Assembly: what powers will the Senate have, and what happens when the two houses disagree? The constitutional answers to these questions will determine whether the Senate functions as a genuine check on the National Assembly or as merely a consultative body whose objections the lower house can override at will.

In comparative terms, there is enormous variation in the powers of upper houses. The British House of Lords can delay but not permanently veto legislation from the House of Commons. The Australian Senate has equal legislative powers with the House of Representatives and can force a double dissolution election if the two houses cannot agree. The Indian Rajya Sabha has significant powers in ordinary legislation but cannot block money bills or constitutional amendments that have passed in the Lok Sabha. The German Bundesrat functions less as an independent legislative chamber than as a mechanism for incorporating the interests of the states (Länder) into federal legislation, with veto power only over laws that directly affect state powers.

The constitutional reform framework for Bangladesh does not specify in detail which of these models the proposed Senate is intended to follow, and the ambiguity is likely to be a source of significant political negotiation in the constitutional drafting process. The BNP, having won a decisive lower house majority, will be tempted to design the Senate with limited powers that preserve the governing party's ability to pass its legislative program. The opposition parties, and particularly the smaller parties that will benefit most from the proportional election of the Senate, will push for a Senate with genuine legislative authority. The constitutional resolution of this tension will be one of the most important tests of whether the reform process genuinely delivers on its promise of institutional checks and balances.

The proposal that constitutional amendments require approval by a majority of the Senate is one of the most significant specific provisions in the reform framework. Under the existing unicameral system, the governing party's two-thirds parliamentary majority is sufficient to amend the constitution without any additional check. The requirement of Senate approval for constitutional amendments creates an additional institutional veto that could make it significantly more difficult for any governing party to amend the constitution to serve its own political interests, particularly given that the Senate's proportional composition is likely to reflect a more diverse distribution of political opinion than the lower house's majoritarian composition.

44.3 The Women's Reservation Controversy and the Constitution of Gender

The proposal for 100 reserved seats for women in the 400-seat National Assembly raises constitutional questions of particular importance for the gender dimensions of Bangladesh's constitutional order. The existing constitutional framework provides for reserved seats for women, but the specific mechanism, appointment by parties in proportion to their electoral strength rather than election, has been criticized as inadequate both in its scope and in its democratic character: it creates a group of parliamentarians who are dependent on party leadership for their positions rather than accountable to a constituency.

The reform proposals represent a significant expansion of women's representation but maintain the reserved seat mechanism rather than moving to a fully integrated electoral system in which women compete on equal terms with men for all seats. This approach has both advantages and limitations. The advantage is that it provides a guaranteed minimum level of women's representation regardless of the willingness of parties to nominate women candidates in winnable constituencies. The limitation is that reserved seat members, particularly those who are not directly elected, may be perceived as lacking the full democratic legitimacy of directly elected members, and may be subject to the kind of patronage pressures that limit their independence.

From the perspective of feminist constitutional theory, the reform proposals represent an important but insufficient step toward genuine gender equality in political representation. The constitutional commitment to gender equality in Article 28 of the existing constitution, as Mahmudul Islam analyzed it, is a formal equality commitment that does not by itself address the structural barriers that prevent women from competing on equal terms in the electoral process. A genuine constitutional commitment to gender equality in political representation would require not merely reserved seats but the elimination of the structural, cultural, and economic barriers that disadvantage women in political competition, a task that goes far beyond constitutional text to the practice of constitutional culture.

CHAPTER FORTY-FIVE: JUDICIAL INDEPENDENCE AND THE CONSTITUTIONAL ARCHITECTURE OF JUSTICE

45.1 The Crisis of Judicial Independence Under the Hasina Government

Mahmudul Islam's constitutional philosophy made judicial independence the fulcrum of his entire constitutional framework. Without an independent judiciary, he argued, the fundamental rights provisions of the constitution are meaningless, the separation of powers is a constitutional fiction, and the constitutional order is merely a façade behind which political power operates without constraint. His career as a constitutional lawyer was in large part a sustained defense of judicial independence against the pressures of executive and legislative interference that threatened to reduce the Supreme Court to an instrument of governmental policy rather than a guardian of constitutional norms.

The crisis of judicial independence under the Hasina government was, from the perspective of Mahmudul Islam's constitutional thought, among the most serious constitutional pathologies of that period. The documented episode in which Chief Justice Surendra Kumar Sinha was placed under extraordinary pressure and ultimately forced to resign and leave Bangladesh in October 2017 was, as a matter of constitutional principle, an assault on the most fundamental dimension of the constitutional order: the independence of the court that is the ultimate guardian of constitutional supremacy. The circumstances of his departure, which he described in a memoir as involving explicit threats and systematic harassment, illustrate with painful clarity the gap between Bangladesh's formal constitutional commitment to judicial independence and the political reality of a court that was vulnerable to executive pressure in ways that went far beyond

the ordinary friction between judges and governments that characterizes all constitutional systems.

The Sixteenth Amendment of 2014, which restored to parliament the power to remove judges through an address procedure, bypassing the Supreme Judicial Council, was another dimension of the judicial independence crisis that Mahmudul Islam's constitutional framework would have condemned. The original constitutional mechanism for judicial removal in Bangladesh, based on the Supreme Judicial Council of the senior judges of the Appellate Division, was specifically designed to insulate the removal of judges from direct parliamentary control, ensuring that decisions about judicial tenure would be made by the judges' peers rather than by the political branches of government. The restoration of parliamentary address as the removal mechanism, subsequently struck down by the Appellate Division as unconstitutional in a landmark ruling, was a direct attack on the institutional independence of the judiciary, and its ultimate fate in the constitutional litigation that followed illustrates both the courage and the limitations of Bangladesh's judiciary in defending its own independence.

45.2 The Reform Proposals on Judicial Independence: Analysis and Assessment

The Constitutional Reform Commission's proposals on judicial independence address the most serious institutional vulnerabilities that the Hasina years had exposed. The proposal to vest the appointment of High Court justices in the Chief Justice rather than in the political executive removes the most direct mechanism through which governments had packed the court with loyalists. The strengthening of the Supreme Judicial Council and the transfer of lower court appointment powers to the Supreme Court address the subordination of the lower judiciary to executive control that had been a chronic pathology of Bangladesh's judicial system.

These proposals align closely with the comparative constitutional best practices that have been developed in international discussions of judicial independence. The Venice Commission of the Council of Europe, the UN Special Rapporteur on the Independence of Judges and Lawyers, and numerous comparative constitutional scholars have identified the appointment process as the most critical variable in determining judicial independence: a court whose members are appointed on political criteria will tend to decide politically sensitive cases in ways that favor the appointing authority, regardless of what the constitution or the law says.

But the reform proposals, if implemented as described, also raise certain constitutional design questions that deserve careful analysis. The proposal to vest appointment power solely in the Chief Justice creates a potential for the Chief Justice to exercise excessive influence over the composition of the court, possibly creating a new form of institutional capture in which the Chief Justice's personal or intellectual preferences shape the court rather than the political preferences of the executive. The best comparative practice on judicial appointment involves a process that distributes decision-making authority among multiple actors, including representatives of the judiciary, the legal profession, and, in some systems, the legislature, in ways that create multiple checks on the appointment process without making it purely political.

The proposal for the establishment of High Court benches in each division of the country is, from a justice access perspective, one of the most practically important of the reform proposals.

Under the existing constitutional framework, the High Court Division of the Supreme Court sits only in Dhaka, which means that citizens from Chittagong, Rajshahi, Khulna, Sylhet, Barisal, Rangpur, and Mymensingh who need to exercise their fundamental right to file writ petitions under Article 102 must either travel to Dhaka or engage Dhaka-based lawyers at considerable expense. The establishment of divisional High Court benches would dramatically reduce the cost and difficulty of accessing constitutional remedies for the majority of Bangladesh's citizens, making the constitutional guarantee of fundamental rights enforcement genuinely accessible rather than merely formally available.

Mahmudul Islam's constitutional thought is directly relevant to this proposal. His analysis of Article 102 and the writ jurisdiction of the High Court Division, which he treated as the most important single mechanism for the enforcement of fundamental rights in Bangladesh's constitutional system, was consistently attentive to questions of access and effectiveness. He understood that the formal availability of a constitutional remedy is not sufficient if the practical barriers to accessing that remedy are so high that the majority of those whose rights have been violated cannot in practice invoke it. The establishment of divisional benches represents the most significant practical reform of the fundamental rights enforcement system since the constitution was adopted, and it is a reform that Mahmudul Islam would have strongly endorsed.

45.3 The National Constitutional Council and the Structure of Constitutional Accountability

One of the most innovative structural proposals in the reform framework is the creation of a National Constitutional Council (NCC) as an oversight body for the appointment of constitutional institutions, including the Election Commission, the Anti-Corruption Commission, and, through the enhanced consultation mechanism, senior judicial appointments. The NCC, as proposed, would be composed of representatives of the legislative, executive, and judicial branches, creating a cross-institutional body designed to ensure that appointments to key constitutional institutions reflect a broader consensus rather than merely the preference of the governing party.

The constitutional theory underlying the NCC proposal draws on a broader global trend in constitutional design toward the creation of independent constitutional commissions as mechanisms for insulating key institutional appointments from direct political control. The practice of constitutionally mandating independent commissions for electoral administration, anti-corruption oversight, human rights protection, and other areas where political independence is essential to institutional credibility has spread rapidly across the developing world in the past three decades, and the comparative evidence on their effectiveness, while mixed, suggests that they can significantly improve institutional quality under the right political conditions.

The specific design of Bangladesh's proposed NCC will be crucial to whether it achieves its intended purpose. The composition of the NCC, the specific processes by which it makes recommendations, the mechanism for resolving disagreements among its members, and the nature and extent of the President's discretion in acting on its recommendations: all of these design details will determine whether the NCC functions as a genuine check on political appointments or as a procedural formality that the governing party can work around.

CHAPTER FORTY-SIX: CONSTITUTIONAL CULTURE, POLITICAL BEHAVIOUR, AND THE SUSTAINABILITY OF REFORM

46.1 The Concept of Constitutional Culture

The most challenging dimension of Bangladesh's constitutional reform process is not the drafting of constitutional provisions but the transformation of the political culture and institutional behaviors that will determine whether those provisions are actually implemented and sustained. Constitutional scholars across the globe have increasingly recognized, particularly in the aftermath of the democratic backsliding of the 2010s in countries as diverse as Hungary, Poland, Venezuela, Turkey, and Bangladesh itself, that formal constitutional design alone cannot guarantee constitutional democracy. What matters equally, and perhaps more, is what constitutional theorists call "constitutional culture": the shared understandings, norms, conventions, and behavioral commitments of political actors and citizens that give constitutional provisions their actual meaning and effectiveness.

The concept of constitutional culture has been developed by scholars including Gary Jacobsohn, who argues in his important work on constitutional identity that every constitutional system develops over time a distinctive constitutional identity shaped by the interaction of constitutional text, legal tradition, political history, and cultural context. This constitutional identity is not simply what the constitutional text says; it is the accumulated understanding, practice, and expectation that governs how constitutional actors actually behave in constitutional situations. A constitutional order with a strong constitutional culture will tend to resolve constitutional disputes through constitutional means even when the political stakes are high; a constitutional order with a weak constitutional culture will tend to resolve constitutional disputes through extra-constitutional means, including the use of emergency powers, the manipulation of constitutional amendment procedures, and the subordination of judicial institutions to political control.

Bangladesh's constitutional culture, as Mahmudul Islam analyzed it throughout his career, has been characterized by a fundamental tension between constitutional aspiration and political behavior. The constitutional aspiration, expressed in the 1972 Constitution's commitment to democracy, fundamental rights, and the rule of law, has been genuine and has commanded significant popular support. But the political behavior of Bangladesh's major parties and governments has repeatedly betrayed this aspiration: the manipulation of the amendment process to entrench political power, the subordination of the judiciary to executive preference, the use of emergency powers to suppress political opposition, and the systematic exploitation of state institutions for partisan advantage have all been features of Bangladesh's constitutional experience across parties, across governments, and across decades.

46.2 The Pathologies of Bangladesh's Constitutional Culture

The pathologies of Bangladesh's constitutional culture are deeply rooted in the political history of the state and cannot be corrected by constitutional design alone, however sophisticated.

Several structural features of Bangladesh's political system have contributed to the persistence of these pathologies.

The binary character of Bangladesh's party system, dominated by the confrontation between the Awami League and the Bangladesh Nationalist Party, has created a zero-sum political culture in which each party treats the other's time in government as an existential threat to be resisted by any available means. The violence that has accompanied Bangladesh's political transitions, the hartals, the street battles, the political murders and forced disappearances, has created a deep mutual distrust between the two major parties that makes the cooperative constitutional behavior necessary for constitutional democracy extraordinarily difficult to sustain. When each party believes that losing an election means not merely losing power but potentially facing criminal prosecution, exile, or worse, the incentive to maintain the informal constitutional norms of democratic competition, accepting electoral defeat gracefully and committing to peaceful power transfer, is dramatically weakened.

The winner-takes-all character of Bangladesh's executive system, in which the governing party controls not only the cabinet and the legislature but, in practice, the public administration, the police, the judiciary, and many nominally independent institutions, amplifies this binary dynamic. In a system where control of the government means control of essentially all significant institutional resources, the stakes of political competition are maximally high, and the temptation to use those resources to ensure continued dominance is maximally strong. This is precisely the structural dynamic that the reform proposals are designed to address, through the bicameral legislature, the enhanced presidential powers, the independent appointment mechanism, and the strengthened judiciary.

The role of money in Bangladesh's politics is a further dimension of constitutional culture that requires candid assessment. The economic analysis of Bangladesh's political system consistently identifies the fusion of economic and political power as a fundamental structural problem: major business interests finance political parties, receive state contracts and regulatory favors in return, and use their economic resources to influence electoral outcomes. This fusion creates a political class whose primary constitutional interest is not the protection of democratic rights and the accountability of power but the maintenance of the economic arrangements that make political participation profitable. Any constitutional reform that genuinely threatens these arrangements, including effective anti-corruption enforcement, independent regulatory bodies, and genuine judicial accountability for economic crimes, will face resistance from these entrenched interests that no constitutional text can overcome without the sustained political will to enforce it.

46.3 Civil Society, the Legal Profession, and the Conditions for Constitutional Reform

If Bangladesh's constitutional culture is to be transformed in ways that make the reform proposals durable, the transformation will need to come primarily from outside the political system itself. The three most important non-state actors in Bangladesh's constitutional culture are civil society organizations, the legal profession, and the academic and intellectual community.

Civil society in Bangladesh has shown remarkable resilience and constitutional commitment across decades of political repression. Organizations like the Bangladesh Rural Advancement

Committee (BRAC), Transparency International Bangladesh, Ain o Salish Kendra, the Bangladesh Legal Aid and Services Trust (BLAST), and numerous other civil society organizations have maintained their commitment to constitutional values, to the rule of law, and to the rights of marginalized communities through periods when the formal constitutional order offered those rights only the most attenuated protection. The Legal Aid organizations in particular have played the role that Mahmudul Islam himself played as a senior practitioner: using the formal machinery of constitutional law to advance the rights of individuals who would otherwise have no effective constitutional protection.

The legal profession occupies a particularly important place in Bangladesh's constitutional culture, as it does in any common law constitutional system. The Supreme Court Bar Association and the bar associations at the lower levels of the legal system have historically been important sites of constitutional consciousness and of organized professional resistance to executive interference with judicial independence. The Bar's collective memory of the constitutional violations of the past, including the suspension of habeas corpus during periods of emergency, the removal of judges, and the use of contempt proceedings to intimidate lawyers who challenged governmental authority, provides an institutional inheritance of constitutional consciousness that is one of the most important resources available to Bangladesh's constitutional reform process.

Mahmudul Islam's contribution to this professional inheritance is impossible to overstate. His constitutional law book is not merely an academic text; it is a manual of constitutional professionalism, a comprehensive account of the constitutional framework within which Bangladesh's lawyers practice their profession and within which Bangladesh's courts exercise their constitutional authority. Generations of Bangladesh's lawyers and judges have learned their constitutional law from Islam's book, and his influence on the constitutional culture of the legal profession is pervasive, deep, and likely to be durable. The constitutional arguments that are being made today in Bangladesh's courts, in its parliamentary debates, and in its academic publications are, in very large measure, arguments that were shaped and given their analytical framework by Mahmudul Islam's constitutional scholarship.

46.4 The International Dimension of Constitutional Culture

Bangladesh's constitutional reform process does not occur in isolation from the global context of constitutional development and democratic backsliding. The international environment for constitutional reform in the 2020s is considerably more complex and contested than it was in the heady days of the post-Cold War democratic wave that provided the background for many of the most successful constitutional reform processes of the 1990s.

The global democratic recession, documented by Freedom House, V-Dem, and other democracy monitoring organizations, has created a more skeptical and more contested international environment for democratic reform. The examples of failed democratic transitions in Egypt, Libya, and Myanmar, and the backsliding from democratic progress in Hungary, Poland, Turkey, and others, have informed a more cautious literature on the conditions necessary for successful constitutional reform. But the examples of successful democratic transitions in Tunisia (until 2021), Zambia, Sierra Leone, and several other countries demonstrate that constitutional reform

can succeed even in challenging environments when the political will, the institutional capacity, and the international support are sufficiently robust.

Bangladesh's specific international context is shaped by several factors: the deep engagement of bilateral development partners, including the United Kingdom, the European Union, and the United States, in supporting democratic governance and constitutional reform; the presence of India as a powerful neighboring state with its own complex relationship to Bangladesh's political development; the role of international financial institutions in conditioning development assistance on governance improvements; and the increasingly important role of international human rights bodies, including the UN Human Rights Council, in monitoring and reporting on Bangladesh's human rights situation.

The international community's response to the constitutional referendum of February 2026 and to the subsequent constitutional reform process will be important both practically and symbolically. International recognition of the referendum result as legitimate, international support for the constitution-drafting process of the newly elected parliament, and international engagement with the specific constitutional design challenges that Bangladesh faces, particularly in areas like judicial independence, anti-corruption enforcement, and the protection of minority rights, can provide important additional incentives and resources for the implementation of the constitutional reforms.

CHAPTER FORTY-SEVEN: MAHMUDUL ISLAM'S ENDURING LEGACY

47.1 The Constitutional Tradition He Created

The assessment of Mahmudul Islam's legacy must begin with the recognition of what he actually created: a constitutional tradition. The word "tradition" is used deliberately and in its full sense. A tradition is not merely a set of ideas that one person develops and then leaves behind; it is a living intellectual inheritance that subsequent generations receive, engage with, transform, and transmit. The tradition that Mahmudul Islam created is exactly this: a framework for constitutional analysis of Bangladesh's constitutional order that subsequent constitutional scholars, practitioners, and judges have received, engaged with, and transmitted, shaping in the process the constitutional consciousness of an entire legal culture.

The tradition that Islam created has several distinctive features that are worth identifying explicitly. The first is its methodological comprehensiveness: Islam was the first constitutional scholar in Bangladesh to analyze the constitutional system as a whole, addressing not merely individual constitutional provisions but the relationships between provisions, the structural logic of the constitutional architecture, and the philosophical commitments that animate the entire constitutional order. This comprehensive approach, contrasting with the more piecemeal analysis that had characterized earlier Bangladeshi constitutional scholarship, established the standard against which subsequent constitutional scholarship in Bangladesh is measured.

The second distinctive feature is its historical depth: Islam consistently situated constitutional provisions and constitutional decisions in their historical context, tracing the roots of constitutional arrangements in the colonial constitutional tradition, the Pakistani constitutional experience, and the specific political history of Bangladesh's independence. This historical consciousness is not merely a scholarly virtue; it is a constitutional necessity. Constitutional provisions that are divorced from their historical context become formal shells that can be filled with any political content; constitutional provisions understood in their historical depth retain the specific meaning and purpose that their framers intended and that the constitutional tradition has developed. Islam's insistence on historical context as an essential dimension of constitutional analysis has made Bangladesh's constitutional jurisprudence more resistant to the formalist manipulation that characterizes systems in which constitutional provisions are treated as mere texts to be interpreted without reference to their animating purposes.

The third distinctive feature is its comparative breadth: Islam consistently drew on the constitutional jurisprudence of other common law systems, particularly England, India, and the United States, to illuminate Bangladesh's constitutional provisions and to situate Bangladesh's constitutional development in its global context. This comparative approach was both intellectually enriching and practically significant: it provided Bangladesh's courts with a body of precedent and analysis from other systems that could be adapted to Bangladesh's specific circumstances, preventing the intellectual parochialism that can afflict constitutional systems that develop in relative isolation from global constitutional developments.

47.2 His Methodology and Its Lasting Value

Mahmudul Islam's constitutional methodology was distinctive and deserves careful explication, both for its intrinsic value and for the lessons it offers to contemporary constitutional scholars and practitioners. His method combined several elements that are not always combined successfully in constitutional scholarship.

The first element was doctrinal precision: Islam was a master of the constitutional text, capable of reading constitutional provisions with extraordinary care and of identifying the specific meaning that the text, read in context, conveyed. His analysis of constitutional provisions typically began with the text itself, attended to the precise language chosen and to the significance of that language in comparison with similar provisions in other constitutional documents, and then proceeded to the interpretation of that text in light of the constitutional history, comparative precedent, and underlying purpose.

The second element was philosophical depth: Islam understood that constitutional law is not a purely technical discipline but a branch of political and moral philosophy, and he was willing to engage with the philosophical dimensions of constitutional questions directly. His analysis of fundamental rights drew on political philosophy from Locke through Mill through Rawls; his analysis of judicial review drew on democratic theory from Rousseau through Hamilton through Dworkin; his analysis of the separation of powers drew on political theory from Montesquieu through the American Federalist Papers through contemporary separation-of-powers scholarship. This philosophical engagement gave his constitutional analysis a depth and richness that purely doctrinal scholarship cannot achieve.

The third element was practical wisdom: Islam's constitutional scholarship was always informed by his experience as a practicing constitutional lawyer. He understood that constitutional provisions have real-world effects, that the gap between constitutional text and constitutional practice is a fact of political life that constitutional scholarship must honestly confront, and that constitutional analysis divorced from the practical realities of Bangladesh's political and judicial system is ultimately sterile. His practical wisdom manifested in his attention to the specific institutional arrangements through which constitutional provisions are implemented, to the incentive structures that shape the behavior of constitutional actors, and to the gap between the constitutional ideal and the constitutional reality that is the constant preoccupation of constitutional practice.

The fourth element was intellectual honesty: Islam was willing to follow his constitutional analysis to its logical conclusions even when those conclusions were uncomfortable for the political establishment, the legal profession, or the scholarly community. His critique of the ratification of martial law proclamations through constitutional amendments, his analysis of the ways in which the amendment power had been abused to entrench executive dominance, his candid assessment of the gap between fundamental rights and their enforcement: all of these represent exercises of the intellectual honesty that distinguishes genuine constitutional scholarship from apologetics for the powerful.

47.3 The Unfinished Constitutional Agenda of His Generation

Mahmudul Islam's generation, the generation of constitutional lawyers and scholars who came of age with Bangladesh's independence and who spent their careers building the intellectual infrastructure of Bangladesh's constitutional order, left behind an unfinished agenda. This is not a criticism but an honest recognition of the limits of what any generation can accomplish. Constitutional development is a long-term project, extending across generations and requiring the sustained commitment of successive generations of constitutional scholars, practitioners, and citizens.

The most important items on the unfinished agenda of Islam's generation can be identified from the structure of his constitutional scholarship itself: the areas where he identified the most serious gaps between constitutional aspiration and constitutional reality, the questions he raised without being able fully to answer, and the developments he could not have anticipated but that his constitutional framework is capable of addressing.

The justiciability of economic and social rights remains the most important item on this unfinished agenda. Islam devoted significant analysis to the directive principles of Part II of the constitution, the constitutional provisions that commit the state to ensuring basic economic security, education, health, and social protection for all citizens. He argued that these provisions were not merely aspirational statements but constitutional norms that should inform the interpretation of justiciable provisions and that should guide legislative and executive action. But he did not, in any of the editions of his book published during his lifetime, develop a full account of how the directive principles should be enforced through the courts, how the constitutional commitment to economic and social rights should be translated into specific judicial remedies, or

how the constitutional dialogue between courts, legislatures, and the executive over social and economic policy should be structured.

The Constitutional Reform Commission's proposal to merge Parts II and III of the constitution, making the directive principle commitments justiciable alongside the civil and political rights, represents the most ambitious response to this unfinished item on Islam's agenda. If implemented, it would transform the constitutional framework in ways that Islam analyzed and implicitly advocated but that he could not have seen implemented in his lifetime. The development of the jurisprudence that would give content to this merger, determining which economic and social rights claims are justiciable, what remedies are available, and how the courts should manage the institutional dialogue with the political branches over the implementation of social and economic rights, is one of the most important tasks that await the constitutional scholars and practitioners of the next generation.

The constitutional status of the indigenous peoples of the Chittagong Hill Tracts is another item on the unfinished agenda of Islam's generation. The CHT Accord of 1997 provided a political framework for addressing the conflict between the indigenous communities of the region and the state, but its implementation has been chronically incomplete, and the constitutional dimensions of indigenous rights, including land rights, cultural rights, the right to self-government, and the right to representation, have never been fully resolved in Bangladesh's constitutional jurisprudence. The reform proposals' recognition of all mother languages as state languages and the replacement of "Bengalee" with "Bangladeshi" as the citizenship designation represent important steps toward a more constitutionally inclusive framework, but the specific constitutional provisions that would give content to indigenous rights in Bangladesh remain to be developed.

The constitutional framework for gender equality, beyond the formal equality provisions that Islam analyzed with great skill, is a further item on the unfinished agenda. The structural barriers to women's full participation in Bangladesh's political, economic, and social life are not fully addressed by the formal constitutional provisions of the equality and non-discrimination clauses. The development of a constitutional jurisprudence of substantive gender equality, informed by the feminist constitutional theory that has developed globally since the 1970s and that Islam engaged with only incompletely in his constitutional scholarship, is an important task for the next generation of constitutional scholars.

47.4 His Place in the Comparative Constitutional Tradition

Mahmudul Islam's constitutional scholarship deserves to be placed in the context of the comparative constitutional tradition, not merely as a contribution to the specifically Bangladeshi constitutional literature but as a contribution to the global conversation about constitutional democracy, fundamental rights, and the relationship between law and politics that constitutes the intellectual core of comparative constitutional law.

In the tradition of great constitutional commentators from whom Islam drew inspiration, including A.V. Dicey on the British constitution, H.M. Seervai on the Indian constitution, P.M. Bakshi and M.P. Singh on various aspects of Indian constitutional law, and Walter Murphy and

James Fleming on American constitutional theory, Islam belongs to the category of scholars who have made their national constitutional system comprehensible to the broader world while simultaneously illuminating, through the specific experience of their own constitutional system, universal questions about the nature and limits of constitutional democracy.

The specific contributions that Islam makes to the comparative constitutional literature include his analysis of constitutional democracy in a post-colonial society, his examination of the challenge of maintaining constitutional norms in a political environment characterized by acute political conflict and weak institutional capacity, his treatment of the relationship between parliamentary democracy and constitutional rights protection in a system without a tradition of strong judicial review, and his analysis of the ways in which the constitutional aspirations of a liberation struggle are translated, imperfectly and incompletely, into the constitutional practice of an independent state.

These are not merely Bangladeshi questions. They are the constitutional questions of our time, faced in different forms by constitutional democracies across the developing world and increasingly, as the experience of democratic backsliding in established democracies has shown, by constitutional democracies everywhere. The intellectual tools that Islam developed for addressing these questions, his commitment to constitutional text informed by history and philosophy, his practical wisdom about the gap between constitutional ideal and constitutional reality, and his intellectual honesty about the limits of constitutional solutions to fundamentally political problems, have a value that extends far beyond the specific constitutional context of Bangladesh.

CHAPTER FORTY-EIGHT: BANGLADESH'S CONSTITUTIONAL FUTURE: PROSPECTS, CHALLENGES, AND THE ROAD AHEAD

48.1 The New Constitutional Order Taking Shape

As of the time of writing in early 2026, Bangladesh stands at the threshold of the most significant constitutional transformation in its history since the adoption of the 1972 Constitution. The referendum has provided the political and popular mandate for constitutional change. The BNP government, commanding the two-thirds parliamentary majority necessary for constitutional amendment, has the formal constitutional authority to implement the changes. The July Charter provides the substantive blueprint for those changes, agreed upon through the most extensive process of multi-party constitutional negotiation that Bangladesh has ever conducted. And the new Constitution Reform Council, composed of the newly elected members of parliament, has the institutional mechanism to translate the Charter's proposals into specific constitutional text within the 180-day timeline that the Implementation Order specifies.

The constitutional work that lies immediately ahead is formidable in its technical complexity and political sensitivity. The drafting of specific constitutional amendments is among the most demanding exercises in legal craftsmanship that any legal system undertakes. The language of a constitutional provision must be precise enough to convey its intended meaning unambiguously,

flexible enough to accommodate the variety of circumstances that will arise in its application, consistent enough with the other provisions of the constitutional document to avoid internal contradiction, and durable enough to remain relevant across the changing circumstances of a society's political, economic, and social development.

These technical demands require constitutional draftsmanship of the highest quality, the kind of quality that Mahmudul Islam exemplified in his analytical work and that Bangladesh's constitutional law community must now deploy in the practical work of constitutional drafting. The specific constitutional provisions that will give effect to the structural reforms mandated by the referendum, the precise language of the expanded fundamental rights provisions, the specific design of the constitutional institutions that will enforce those rights, and the detailed allocation of powers between the new Senate and the National Assembly: all of these require careful legal craftsmanship informed by the full depth of constitutional analysis that Islam's scholarly tradition represents.

48.2 The Fundamental Challenge of Constitutional Implementation

The history of constitutional reform processes globally teaches a humbling lesson: the gap between constitutional promise and constitutional performance is one of the most persistent features of constitutional systems, and it is particularly pronounced in societies characterized by weak institutional capacity, acute political polarization, and entrenched interests with strong incentives to subvert constitutional constraints on their power.

Bangladesh's constitutional reform process faces all of these challenges in acute form. The BNP government that has assumed power brings to office not only the constitutional reform mandate of the referendum but also the accumulated political culture of a party that, like its predecessor and rival the Awami League, has shown in its previous periods of government a tendency to prioritize party interest over constitutional principle when the two come into conflict. The question of whether the BNP's constitutional commitment, expressed through its participation in the July Charter negotiations and its endorsement of the referendum outcome, represents a genuine transformation of its constitutional behavior or merely a tactical accommodation to the political circumstances of the post-uprising moment is one that only time and the experience of actual governance can answer.

There are several specific institutional tests that will measure the genuineness of the BNP government's constitutional commitments. The first is the actual drafting and adoption of constitutional amendments that faithfully implement the reform mandate of the referendum, including provisions that constrain the BNP's own exercise of executive power through enhanced presidential independence, independent appointment mechanisms, and strengthened judicial oversight. Constitutional amendments that nominally fulfill the reform mandate while actually preserving the governing party's ability to exercise unconstrained power, through carefully crafted exceptions, ambiguous language, or procedurally correct but substantively evasive provisions, would represent a fundamental betrayal of the constitutional reform process.

The second test is the implementation of the specific institutional reforms that the constitutional amendments mandate. Establishing a genuinely independent Election Commission, enforcing the

prime ministerial term limits, creating a genuinely powerful and independent Senate, strengthening the Supreme Judicial Council and transferring judicial appointment powers to the Chief Justice, establishing High Court benches in all divisions: these institutional changes require not merely constitutional text but the allocation of resources, the appointment of genuinely independent personnel, the development of implementing legislation, and the sustained political will to allow newly independent institutions to exercise their constitutional authority even when doing so is inconvenient for the government.

The third test is the government's response when the new constitutional institutions exercise their authority in ways that challenge or constrain governmental action. Independent courts have the capacity and the constitutional mandate to strike down legislation or executive action that violates constitutional provisions; independent commissions have the capacity and the mandate to investigate and prosecute corruption even when it involves members or allies of the governing party; an independent Senate has the capacity and the mandate to reject or delay legislation that it finds constitutionally or politically deficient. The government's response to the exercise of these institutional powers, whether it accepts the constitutional constraints they represent or finds ways to circumvent or undermine them, will be the ultimate test of whether the constitutional reform of 2025 through 2026 has genuinely transformed Bangladesh's constitutional order.

48.3 The Role of the Supreme Court in the Reformed Constitutional Order

The Supreme Court of Bangladesh will play a pivotal role in the constitutional transition of the coming years, and the quality of constitutional jurisprudence that the court develops in response to the challenges of the new constitutional order will be one of the most important determinants of whether the reform process achieves its intended objectives.

The expanded fundamental rights provisions, if they are adopted in the form proposed by the Constitutional Reform Commission, will create an enormous body of new constitutional litigation as individuals and organizations seek to give content to the newly justiciable rights to food, shelter, education, healthcare, and other economic and social entitlements. The court will need to develop a jurisprudence of socio-economic rights adjudication that is sensitive to both the constitutional imperative of enforcing rights and the institutional reality that courts have limited capacity to manage the complex resource allocation decisions involved in social policy implementation. The comparative jurisprudence of socio-economic rights in South Africa, India, Colombia, and other jurisdictions provides rich material for the development of this jurisprudence, but the Bangladesh court will need to adapt these comparative lessons to Bangladesh's specific institutional, political, and resource context.

The bicameral legislature creates new constitutional questions about the relationship between the two chambers that the court will need to address: how to resolve constitutional disagreements between the Senate and the National Assembly, what happens when a law passes one chamber but not the other, how constitutional amendments are to be processed when the two chambers cannot agree. These are questions that comparative constitutional courts have addressed in various ways, and the Bangladesh Supreme Court will need to develop answers that are consistent with both the letter of the new constitutional provisions and the underlying purpose of the bicameral reform: to create a more deliberative and more accountable legislative process.

The enhanced independence of the judiciary, if implemented as proposed, creates both opportunity and responsibility for the Supreme Court. An independent court can develop a bold and transformative constitutional jurisprudence; it can strike down laws and executive actions that violate constitutional principles without fear of political retribution; and it can develop the kind of sustained constitutional dialogue with the political branches that is the hallmark of mature constitutional democracy. But an independent court is also accountable in a different sense: its decisions must be justified in terms of the constitutional principles and precedents that the court is bound to respect, and a court that exercises independence irresponsibly, making constitutionally arbitrary decisions, will undermine the very constitutional legitimacy that its independence is designed to serve.

Mahmudul Islam's analysis of the Supreme Court's constitutional role provides the essential framework for thinking about how the court should exercise its enhanced independence in the reformed constitutional order. His insistence on constitutional text, constitutional history, and constitutional principle as the proper bases of judicial decision-making, his analysis of the appropriate scope of judicial review, and his discussion of the relationship between judicial activism and judicial restraint in the Bangladesh constitutional context all remain directly relevant to the constitutional jurisprudence that the court will need to develop in response to the challenges of the new constitutional order.

48.4 The Constitutional Significance of the July 2024 Generation

The July-August Uprising of 2024 was, to a remarkable degree, a youth uprising: the initial protests were led by university students, and the movement that ultimately brought down the Hasina government drew much of its energy and organizational capacity from a generation of young Bangladeshis for whom the constitutional failures of the preceding decade and a half were not historical memories but lived experiences. The student-led National Citizen Party (NCP), which emerged from the uprising as a new political force, represents this generation's attempt to give political institutional form to the constitutional aspirations that animated the uprising.

The constitutional significance of this generational dimension of the uprising is substantial. Constitutional cultures are renewed or transformed at moments of generational transition, when a new generation that has different formative political experiences brings different constitutional expectations and demands to the political system. The generation that fought for Bangladesh's independence in 1971 brought to the constitution-making process a set of constitutional commitments rooted in the experience of liberation from Pakistani rule: the commitment to Bengali cultural nationalism, to democratic self-governance, to the equal dignity of all citizens regardless of religion, and to the social and economic transformation that independence was supposed to bring. The generation of the July Uprising brings to the constitutional reform process a different but equally powerful set of formative experiences: the experience of growing up under a system that described itself as democratic while systematically denying the substance of democracy, the experience of exercising constitutional rights in theory while seeing those rights meaningless in practice, and the experience of discovering, through the uprising itself, the constitutional power of organized popular action.

The constitutional demands of the July generation, as expressed through the uprising and its political aftermath, align in important ways with the unfinished constitutional agenda of Mahmudul Islam's generation: the demand for genuine rather than formal fundamental rights protection, the demand for independent rather than politically captured institutions, the demand for economic justice rather than the mere formal commitment to social equality, and the demand for a constitutional culture in which the powerful are genuinely accountable to the governed rather than merely performing accountability while exercising unconstrained power.

The NCP's constitutional proposals, including its call for a "Bangladesh Constitution 2026" that would represent a clean break from the constitutional order associated with both the Awami League and the BNP's alternating dominance, reflect the most radical version of the July generation's constitutional aspirations. Whether this generational constitutional vision can be translated into durable institutional arrangements, or whether the new constitutional order will be shaped primarily by the more conservative constitutional preferences of the established parties, is one of the defining questions of Bangladesh's constitutional development in the years ahead.

48.5 The Digital Constitution and the Constitutional Challenges of the Twenty-First Century

Bangladesh's constitutional reform process occurs at a moment when constitutional democracies worldwide are grappling with a set of constitutional challenges posed by digital technology that have no clear precedent in the constitutional tradition. The use of social media for political mobilization, the surveillance capabilities of digital technology, the concentration of information power in a small number of private technology platforms, the constitutional implications of artificial intelligence in governance and law enforcement, and the challenge of regulating digital speech without violating constitutional guarantees of freedom of expression: all of these are constitutional questions that the July Charter and the Constitutional Reform Commission have addressed only incompletely and that will require sustained constitutional analysis in the years ahead.

Mahmudul Islam's analysis of freedom of expression in Article 39 of the constitution provided the foundational constitutional framework for analyzing these questions in the Bangladeshi context. He analyzed the constitutional limits on speech regulation with care and precision, identifying the permissible grounds for restricting speech and the constitutional requirements of proportionality and specificity that any such restriction must satisfy. His analysis anticipated, in important ways, the constitutional problems that the Digital Security Act and its successor would create: he had argued that restrictions on political speech, in particular, must be subjected to the most demanding constitutional scrutiny, and that laws that effectively criminalize political criticism of the government are incompatible with the constitutional commitment to free expression.

The constitutional challenge for the reformed Bangladesh is to develop a digital rights framework that protects the constitutional freedoms of speech, privacy, and association in the digital sphere while maintaining the state's capacity to address genuine harms caused by digital technology, including cybercrime, online harassment, disinformation, and the use of digital platforms for incitement to violence. This is one of the most technically complex and politically

contested areas of contemporary constitutional jurisprudence, and Bangladesh's constitutional reform process has only begun to address it. The recommendation for internet access as a fundamental right, included in the expanded rights framework, represents a first step in the constitutionalization of digital rights, but the development of a comprehensive digital rights jurisprudence will be one of the major tasks of the next generation of Bangladesh's constitutional scholars and practitioners.

CONCLUSION TO PART EIGHT AND THE WORK AS A WHOLE

The Constitutional Measure of Bangladesh's Development

Eight parts and forty-eight chapters of this textbook have traced a comprehensive arc through the constitutional thought of Mahmudul Islam and through the constitutional development of Bangladesh from its founding moment in 1972 through the extraordinary events of 2024 through 2026. The time has come to draw together the threads of this analysis and to assess both the specific contribution of Mahmudul Islam and the broader constitutional condition of the country whose constitutional law he spent his career analyzing and defending.

The constitutional measure of Bangladesh's development, at the moment of the constitutional reform process that culminates the period covered by this textbook, is a measure of both achievement and continuing challenge. The achievements are genuine and deserve to be acknowledged. Bangladesh exists, which is not trivial: the state created out of a devastating war of liberation has survived military coups, constitutional manipulation, natural disasters, political violence, and the systematic undermining of its democratic institutions, and has emerged with its constitutional aspiration essentially intact. The Supreme Court has, on numerous occasions, exercised the courage to strike down unconstitutional actions even at considerable institutional risk. Civil society has maintained its commitment to constitutional values through extended periods of political repression. The legal profession has preserved and transmitted the constitutional tradition that Mahmudul Islam did so much to create. And the people of Bangladesh, through the July Uprising and the referendum of February 2026, have demonstrated their continued attachment to the democratic constitutional vision that animated the founding of the state.

The challenges are equally genuine and equally deserving of honest acknowledgment. The constitutional reform process that is underway represents the most ambitious attempt in Bangladesh's history to address the structural vulnerabilities of the constitutional order that Mahmudul Islam spent his career identifying and analyzing. But the success of this process is not guaranteed. The history of constitutional reform in Bangladesh and in comparable political environments around the world teaches caution about the predictive value of formal constitutional change: many constitutional reforms that were celebrated at the moment of their adoption have been subverted, circumvented, or simply ignored in the years following their adoption, as the political actors who were bound by them found ways to work around the new institutional constraints while formally complying with them.

The specific risks that the current reform process faces have been analyzed in the preceding chapters: the risk that the BNP's constitutional commitments are tactical rather than genuine; the risk that the specific constitutional amendments will be drafted in ways that nominally implement the reform mandate while actually preserving the governing party's ability to exercise unconstrained power; the risk that newly independent institutions will face subtle rather than overt pressure to defer to the political preferences of the government; and the risk that the culture of constitutional impunity that has characterized Bangladesh's political elite across parties will prove more durable than the formal constitutional reforms designed to constrain it.

Mahmudul Islam's Enduring Relevance

The central argument of this textbook, developed across eight parts and now brought to its conclusion, is that Mahmudul Islam's constitutional thought is not merely a historical artefact, a record of what one particularly gifted constitutional lawyer thought about Bangladesh's constitution in the 1990s and 2000s, but a living intellectual inheritance that is directly relevant to the constitutional challenges that Bangladesh faces in the present and will face in the immediate future.

His relevance is specific, not merely general. The questions that the constitutional reform process of 2024 through 2026 has placed at the center of Bangladesh's constitutional life are the questions that Islam spent his career analyzing: What prevents a parliamentary majority from becoming a constitutional dictatorship? How can fundamental rights be enforced against a government that has the political power to ignore them? What institutional arrangements are necessary to make judicial independence genuine rather than merely formal? How should constitutional provisions be interpreted when their text is ambiguous and their purpose contested? And what is the relationship between constitutional law and political culture, between the formal constitutional order and the informal norms and behaviors that give constitutional provisions their actual meaning?

Islam did not answer these questions with finality, because constitutional questions of this depth and generality do not admit of final answers. What he did was to develop a framework for addressing them, a combination of doctrinal precision, philosophical depth, historical consciousness, comparative engagement, and practical wisdom that represents the most sophisticated available approach to constitutional analysis in the Bangladesh context. This framework is not merely Islam's personal intellectual achievement; it is a contribution to the constitutional tradition of Bangladesh that belongs now to everyone who engages with that tradition, whether as scholar, practitioner, judge, or citizen.

The Constitutional Aspiration That Remains

The 1972 Constitution of Bangladesh was, as Mahmudul Islam recognized, an aspirational document. It promised things, profound and difficult things, to the people of a nation emerging from the devastation of a liberation war: equal rights, fundamental freedoms, democratic self-governance, social justice, and the protection of human dignity. These promises were not fully kept in the decades that followed. The constitutional history of Bangladesh between 1972 and

2026 is, in significant measure, the history of the gap between these constitutional promises and the political realities that constrained, subverted, and sometimes simply ignored them.

But the aspiration survives. The July Uprising demonstrated, with extraordinary force, that Bangladesh's people retain a deep commitment to the constitutional values that animated the founding of the state: to genuine democracy, to the accountability of power, to the protection of individual rights against the overreach of governmental authority, and to the equal dignity of all citizens regardless of their religion, ethnicity, gender, or class. The constitutional reform process that the uprising set in motion represents the most serious attempt in Bangladesh's history to translate this aspiration into durable institutional reality.

Whether this attempt will succeed depends on factors that constitutional analysis alone cannot determine: the quality of political leadership, the depth of popular commitment to constitutional norms, the effectiveness of civil society in holding the powerful accountable, and the willingness of each successive generation to learn from the constitutional failures of the past and to build, patiently and incrementally, the constitutional culture that alone can give constitutional provisions their full meaning and force.

What constitutional analysis can do, and what Mahmudul Islam's constitutional thought does with particular power and clarity, is to articulate the constitutional aspiration with sufficient precision and depth that those who are working to realize it have a clear understanding of what they are working toward: not merely a more efficient administration or a more stable political system, but a genuine constitutional democracy in which the dignity of every person is recognized and protected, in which power is constrained by law and accountable to the governed, and in which the promises that Bangladesh made to itself when it wrote its constitution are progressively, and with full consciousness of the distance still to travel, made real.

That is Mahmudul Islam's constitutional legacy. It is a legacy of intellectual rigor, political courage, and constitutional faith. It is the legacy of a man who believed, despite the abundant evidence that constitutional promises are easily broken, that the constitution matters, that the careful analysis of constitutional provisions has practical consequences for the lives and liberties of real people, and that the work of constitutional understanding is never finished but is always worth doing.

The work continues. The constitutional journey of Bangladesh continues. And the constitutional thought of Mahmudul Islam, brought to bear on the constitutional challenges of a new and perhaps genuinely transformative moment in the country's history, continues to illuminate, to guide, and to demand the intellectual and constitutional seriousness that the project of constitutional democracy has always required and always will.

CONCLUSION TO THE TEXTBOOK: THE EIGHT PARTS AS A CONSTITUTIONAL WHOLE

It is appropriate, at the conclusion of a work of this scope and ambition, to reflect briefly on what the eight parts together constitute as a body of constitutional analysis.

Part One established the biographical and intellectual foundations: who Mahmudul Islam was, how he was formed, and what constitutional tradition he inhabited and transformed. Part Two examined his analysis of fundamental rights and the constitutional promise of human dignity. Part Three analyzed his understanding of the separation of powers, the architecture of parliamentary democracy, and the structural conditions for constitutional government. Part Four explored the constitutional dimensions of the economic order: property, labor, and the jurisprudence of economic justice. Part Five deepened the analysis of fundamental rights doctrine, examining the specific provisions of the constitution and the jurisprudence that has developed around them through the lens of Islam's constitutional thought. Part Six situated Bangladesh's constitutional order in its international context, examining the relationship between domestic constitutional law and international human rights norms. Part Seven analyzed the constitutional dimensions of Bangladesh's economic governance, from land rights through labor to environmental constitutionalism and the digital economy. And this final Part has examined the constitutional future: the revolutionary moment of 2024, the reform process of 2025 through 2026, the prospects for sustainable constitutional democracy, and the enduring significance of Mahmudul Islam's constitutional legacy.

Together, these eight parts constitute something more than the sum of their individual analyses. They constitute a comprehensive account of what it means to take a constitution seriously, to treat it not as a formal document to be consulted when convenient and ignored when inconvenient, but as the fundamental law of a political community, the expression of its deepest commitments and highest aspirations, and the standard against which all exercises of power must ultimately be measured.

This is what Mahmudul Islam taught. This is what his constitutional thought, read carefully and engaged with seriously, continues to teach. And this is the constitutional standard to which Bangladesh, in the extraordinary constitutional moment of 2025 and 2026, is once again being called.

BIBLIOGRAPHIC NOTE AND FURTHER READING FOR PART EIGHT

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This concludes the eighth and final Part of Constitutional Commentaries: The Jurisprudence and Legacy of Mahmudul Islam. The work as a whole is dedicated to the proposition that understanding the law of a constitution is not merely an academic exercise but a civic necessity, and that the careful, honest, and philosophically serious constitutional scholarship that Mahmudul Islam exemplified is among the most important contributions that the legal intellectual tradition can make to the constitutional life of a democratic society.

End of Part Eight and the Complete Work

“The success of the people’s uprising will ultimately be determined by an effective leadership that directs it towards establishing democratic values under the Constitution. The judiciary has a vital role in this movement.”

— Mahmudul Islam



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